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ORIGINAL EXHIBITS

Supreme Court of the United States

OCTOBER TERM, 1938

No. 55

A. E. McDONALD, PETITIONER,

vs.

ERNEST O. THOMPSON ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED MAY 21, 1938.

CERTIORARI GRANTED OCTOBER 10, 1938.

SUPREME COURT OF THE UNITED STATES

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ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 25, 1938.

—8107

[fols. 1-2] EXHIBIT "A"

ORDER GRANTING SPECIAL COMMODITY CARRIER PERMIT

Railroad Commission of Texas

Motor Transportation Division

Motor Carrier Docket No. 13047

Application of A. E. McDONALD, Waxahachie, Texas, for a Permit Authorizing the Operation of a Special Commodity Motor Carrier Service in the Transportation of Livestock, Livestock Feedstuffs, Wool, and Farm Machinery Over all the Highways of Texas

Austin, Texas, March 14, 1934.

Order

By the COMMISSION:

On the 14th day of March, 1934, the Railroad Commission of Texas took up for consideration the above styled application, the same having been filed on the 24th day of February, 1934, and notice of hearing thereon having been waived by protesting carriers. The applicant agreed to eliminate from his application all portions thereof except that asking for authority to transport Livestock. He further agreed that such permit should be restricted to transporting only Livestock belonging to the State or being distributed under State authority.

The Commission Finds: That the highways over which the principal portion of the prop-sed traffic will move are of such type of construction and in such state of repair and maintenance as will permit the additional traffic sought to be placed thereon by the applicant without unnecessary damage to said highways or without unreasonably interfering with the general public using said highways for general highway purposes; that the applicant has furnished satisfactory proof of his financial responsibility, and that the equipment proposed to be used by the applicant complies with the laws of this State in regard to safety, dimensions, etc. Therefore, after carefully considering the evidence, the law, and its own rules and regulations, the Commission

is of the opinion that the application should be granted, subject to the limitations and restrictions hereinafter set forth. Accordingly, it is.

Ordered by the Railroad Commission of Texas that the application of A. E. McDonald for a permit authorizing the operation of a Special Commodity Motor Carrier Service, be, and the same is hereby granted as follows:

To transport, between all points in Texas Livestock belonging to or being distributed by or under authority of the Agricultural Department of the State of Texas.

Railroad Commission of Texas, Lon A. Smith, Chairman; C. V. Terrell, Commissioner.

Attest: C. F. Petet, Secretary. (Seal.)

TLC/mn.

[fol. 3] County of Travis,
State of Texas:

I, Wilma O'Neal, Acting Secretary of the Railroad Commission of Texas do hereby certify that the attached copy of Order granting Special Commodity Permit No. 13047 is a true and correct copy of the original document now on file as a part of the records of the Railroad Commission of Texas.

Given under my hand and seal of the Railroad Commission of Texas, this the 23 day of January, 1936.

C. F. Petet, Wilma O'Neal, Acting Secretary, Railroad Commission of Texas.

[fol. 4] Duplicate

Special Commodity Carrier Permit No. 13047

Application No. 13047.
Docket No. 13047.

Special Commodity Carrier Permit

Railroad Commission of Texas

Motor Transportation Division

Austin, Texas, March 30, 1934.

(Name of Applicant:) A. E. McDonald, of (Address:) Waxahachie, Texas, having complied with all the requirements of Chapter 314, Acts, Regular Session of the Forty-

first Legislature, 1929, as amended at the Regular Called Session of the Forty-second Legislature, 1931, applicable to Special Contract Carriers and having declared an intention not to operate as a "Common Carrier" or "Contract Carrier" Motor Carrier, is entitled to and is hereby granted a permit to operate as a Special Commodity Carrier within the State of Texas and within the territory as follows:

It is especially understood and agreed that this permit authorizes the transportation of the following commodity only:

Livestock—Belonging to or being distributed by or under authority of the Agricultural Department of the State of Texas, between all Texas Points.

All equipment to be operated under authority of this Permit is to be restricted exclusively to that owned by the holder of such Permit and shall not exceed One Truck of more than 1½ tons capacity.

as more fully appears in this application filed herein. This permit to remain in effect from and after the date hereof, subject to the provisions of Chapter 314, Acts Regular Session of the Forty-first Legislature, 1929, as amended at the Regular Session of the Forty-second Legislature, 1931; the further orders of the Commission; and the rules and regulations of the Railroad Commission of Texas, heretofore prescribed or which may be hereafter prescribed under and pursuant to the authority conferred upon it by law.

Railroad Commission of Texas, Lon A. Smith, Chairman, C. V. Terrell, Commissioners.

Attest: C. F. Petet, Secretary. (Seal.)

Form 4191B—O-884-834-2500 in dup.

[fol. 5] County of Travis,
State of Texas:

I, C. F. Petet, Secretary of the Railroad Commission of Texas do hereby certify that the attached Copy of Special Commodity Permit No. 13047 is a true and correct copy of the original document now on file as a part of the records of the Railroad Commission of Texas.

Given under my hand and seal of the Railroad Commission of Texas, this the 23 day of January, 1936.

C. F. Petet, Secretary Railroad Commission of Texas.

EXHIBIT B

ORDER CANCELING SPECIAL COMMODITY PERMIT

RAILROAD COMMISSION OF TEXAS

MOTOR TRANSPORTATION DIVISION

MOTOR CARRIER DOCKET NO. 13047

MOTION OF THE RAILROAD COMMISSION OF TEXAS TO CANCEL SPECIAL COMMODITY PERMIT 13047 HERETOFORE ISSUED BY SAID COMMISSION

TO A. E. MCDONALD, WAXAHACHIE, TEXAS,

AUTHORIZING THE OPERATION OF A SPECIAL COMMODITY PERMIT

FOR FAILURE TO PAY TAX AND PLATE FEES AS REQUIRED BY LAW.

AUSTIN, TEXAS, OCTOBER 25, 193 4.

O R D E R

BY THE COMMISSION:

On October 25, 193 4 , the above styled application was called for hearing in its regular order on the Docket in the Capitol at Austin, Texas, the same being the time and place heretofore designated for such hearing, and notice of the same was filed with the operator, all interested parties, and the public generally, according to law.

At such time the applicant came not, either in person or by attorney, but wholly made default, and the Commission, after duly considering the law, the facts, and its own rules and regulations, is of the opinion that the same should be canceled. Accordingly, it is

ORDERED BY THE RAILROAD COMMISSION OF TEXAS that Permit No. 13047 , as above described, be, and the same is hereby canceled, effective the 1st day of September 1934.

RAILROAD COMMISSION OF TEXAS

Lon A. Smith
Chairman

Commissioner

ATTEST:

MOTOR REGISTRATION DIVISION

MOTOR CARRIER DOCKET NO. 13047

MOTION OF THE RAILROAD COMMISSION OF TEXAS TO CANCEL SPECIAL COMMODITY PERMIT 13047 HERETOFORE ISSUED BY SAID COMMISSION

TO A. E. MCDONALD, WAXAHACHIE, TEXAS,

AUTHORIZING THE OPERATION OF A SPECIAL COMMODITY PERMIT

FOR FAILURE TO PAY TAX AND PLATE FEES AS REQUIRED BY LAW.

AUSTIN, TEXAS, OCTOBER 25, 193 4.

O R D E R

BY THE COMMISSION:

On October 25, 193 4 , the above styled application was called for hearing in its regular order on the Docket in the Capitol at Austin, Texas, the same being the time and place heretofore designated for such hearing, and notice of the same was filed with the operator, all interested parties, and the public generally, according to law.

At such time the applicant came not, either in person or by attorney, but wholly made default, and the Commission, after duly considering the law, the facts, and its own rules and regulations, is of the opinion that the same should be canceled. Accordingly, it is

ORDERED BY THE RAILROAD COMMISSION OF TEXAS that Permit No. 13047 , as above described, be, and the same is hereby canceled, effective the 1st day of September 1934.

RAILROAD COMMISSION OF TEXAS

Lon A. Smith
Chairman

Commissioner

ATTEST:

Emily D. Thompson
Commissioner

Secretary

TLC/mn

EXHIBIT C

O-140-1132-13M

COMMON CARRIER MOTOR OPERATOR'S APPLICATION TO OPERATE INTERSTATE

Note: Application will not be received and filed unless all requirements and instructions are complied with. Read application blank carefully before filling out.

Leave this Page Blank
to be used by the Commission.

Application No. 1044 Certificate No.

Docket No.

Applicant's Name

Address (Street)

(Town)

(State)

RECEIVED
MAY 1 1934
RAILROAD COMMISSION
Motor Transportation Division

RECORD

Filed

Set for Hearing

Place

Heard File C

Certificate Issued

Ins. Filed Name of Ins. Co.

Policy No. Date of Expiration

Termini: From to

OPERATE INTERSTATE

Note: Application will not be received and filed unless all requirements and instructions are complied with. Read application blank carefully before filling out.

Leave this Page Blank to be used by the Commission.

Application No. 1044 Certificate No.

Docket No.

Applicant's Name

Address (Street)

(Town)

(State)

RECEIVED
MAY 1 1934
RAILROAD COMMISSION
Motor Transportation Division

RECORD

Filed

Set for Hearing

Place

Heard File

Certificate Issued

Ins. Filed Name of Ins. Co.

Policy No. Date of Expiration

Termini: From to

Other information:

Filing Fee 25.00 c/e 333731
5-1-34

Application No. .....
(LEAVE BLANK)

APPLICATION FOR CERTIFICATE TO OPERATE A COMMON CARRIER. MOTOR CARRIER SERVICE

INTERSTATE.

BEFORE THE
RAILROAD COMMISSION OF TEXAS
MOTOR TRANSPORTATION DIVISION

To the Railroad Commission of Texas:

The undersigned hereby makes application for a certificate to operate as a Common Carrier Motor Carrier within the State of Texas, and respectfully submits the following facts required by law.

1. Print in full and accurate name and address of applicant.

A. E. McDonald

Print Address: Town Waxahachie ; Street ; State Texas

2. State character of organization, that is whether individual, firm, association or corporation.

individual

3. Name and address of officers, if a corporation.

4. If an individual, firm, or association, give names and address of all parties owning an interest in the motor freight truck line or organization.

A. E. McDonald Waxahachie, Texas.

5. Exhibit "A". Give a complete statement of financial condition of applicant, showing all assets of every kind and character and present value thereof, and all liabilities of every kind and character, including debts secured by mortgages and not secured, judgments, current indebtedness and all other liabilities. The statement should be typewritten on same sized sheet as this marked Exhibit "A" and attached to this application.

6. Exhibit "B." Number of trucks to be operated three

Give complete detailed information as follows regarding each truck operated, or to be operated, including reserve equipment:

(a) Name of manufacturer..... Motor No.....

To the Railroad Commission of Texas:

The undersigned hereby makes application for a certificate to operate as a Common Carrier Motor Carrier within the State of Texas, and respectfully submits the following facts required by law.

1. Print in full and accurate name and address of applicant.

A. E. McDonald

Print Address: Town Waxahachie ; Street ; State Texas

2. State character of organization, that is whether individual, firm, association or corporation.

individual

3. Name and address of officers, if a corporation.

4. If an individual, firm, or association, give names and address of all parties owning an interest in the motor freight truck line or organization.

A. E. McDonald Waxahachie, Texas.

5. Exhibit "A". Give a complete statement of financial condition of applicant, showing all assets of every kind and character and present value thereof; and all liabilities of every kind and character, including debts secured by mortgages and not secured, judgments, current indebtedness and oll other liabiliities. The statement should be typewritten on same sized sheet as this marked Exhibit "A" and attached to this application.

6. Exhibit "B." Number of trucks to be operated three

Give complete detailed information as follows regarding each truck operated, or to be operated, including reserve equipment:

(a) Name of manufacturer Motor No.

(b) Style and yearly model (h) Weight

(c) Capacity in tons (i) Length

(d) Motor Number (j) Width

(e) State License Number (k) Height unloaded

(f) Date purchased new

(g) Date purchased by applicant

If this space is not sufficient to describe all trucks, make typewritten sheet, same size as this, and attach to this application marked Exhibit "B". If it is attached as an exhibit, indicate that fact in the blank space here, listing all trucks on the exhibit, using above form.

EXHIBIT "D".

Applicant desires to operate from Waxahachie, Texas, to points in Oklahoma via Dallas and Denison, Texas over State highway No. 6 and from Waxahachie to points in Oklahoma via Fort Worth and Gainesville over State highway No. 34 from Waxahachie to Fort Worth and State highway No. 10 to Denton and State highway No. 40 from Denton to the Oklahoma State line; and from Denton to Waxahachie via Dallas over State highway No. 40 from Denton to Dallas and from Waxhachie to Galveston via Ennis to Corsicana to Huntsville to Houston to Galveston traversing State highway No. 34 from Waxahachie to Ennis and from Ennis to Galveston, Texas over Federal highway No. 75; from Waxahachie to Hillsboro to Waco to Austin to San Antonio to McAllen traversing State highway No. 6 from Waxahachie to Hillsboro and Fed. highway No. 81 to San Antonio, Texas, and State highway No. 66 from San Antonio to McAllen, and from Waxahachie to Galveston traversing No. 6 and No. 2 to Waco Texas, and State highway No. 6 from Waco to Galveston via Houston. If the Commission finds that the highways from Galveston to Waxahachie are too congested to use Federal highway No. 75 from Houston to Huntsville then in the alternative applicant requests that he be given permission to use State highway No. 45 from Navasota to Huntsville thus using Fed. highway No. 75 to Houston, State highway No. 6 from Houston to Navasota State highway No. 45 from Navasota to Huntsville and Federal highway No. 75 to Ennis and State highway No. 34 from Ennis to Waxahachie.

Applicant would respectfully show the character of transportation he intends to engage in is the hauling for hire of commodities moving in interstate commerce. The highways are all weather, paved and are in good condition.

EXHIBIT "E".

Applicant will operate on an irregular schedule and at no time exceed one round trip schedule per day with not to exceed two trucks each.

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to Galveston traversing State highway No. 34 from Waxahachie to Ennis and from Ennis to Galveston, Texas over Federal highway No. 75; from Waxahachie to Hillsboro to Waco to Austin to San Antonio to McAllen traversing State highway No. 6 from Waxahachie to Hillsboro and Fed. highway No. 81 to San Antonio, Texas, and State highway No. 66 from San Antonio to McAllen, and from Waxahachie to Galveston traversing No. 6 and No. 2 to Waco Texas, and State highway No. 6 from Waco to Galveston via Houston. If the Commission finds that the highways from Galveston to Waxahachie are too congested to use Federal highway No. 75 from Houston to Huntsville then in the alternative applicant requests that he be given permission to use State highway No. 45 from Navasota to Huntsville thus using Fed. highway No. 75 to Houston, State highway No. 6 from Houston to Navasota State highway No. 45 from Navasota to Huntsville and Federal highway No. 75 to Ennis and State highway No. 34 from Ennis to Waxahachie.

Applicant would respectfully show the character of transportation he intends to engage in is the hauling for hire of commodities moving in interstate commerce. The highways are all weather, paved and are in good condition.

EXHIBIT "E".

Applicant will operate on an irregular schedule and at no time exceed one round trip schedule per day with not to exceed two trucks each.

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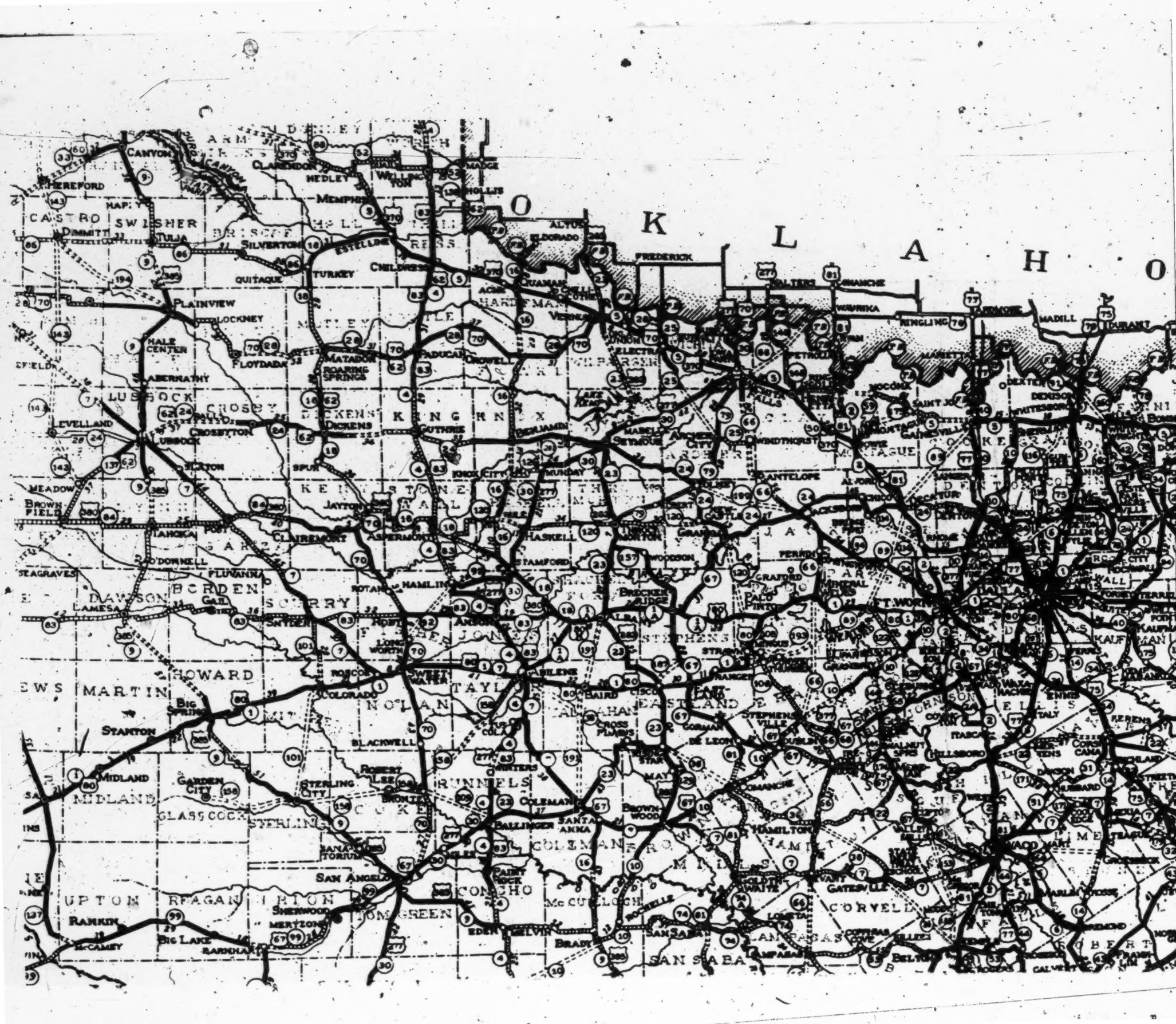
MAY 1 1934
RAILROAD COMMISSION
Motor Transportation Division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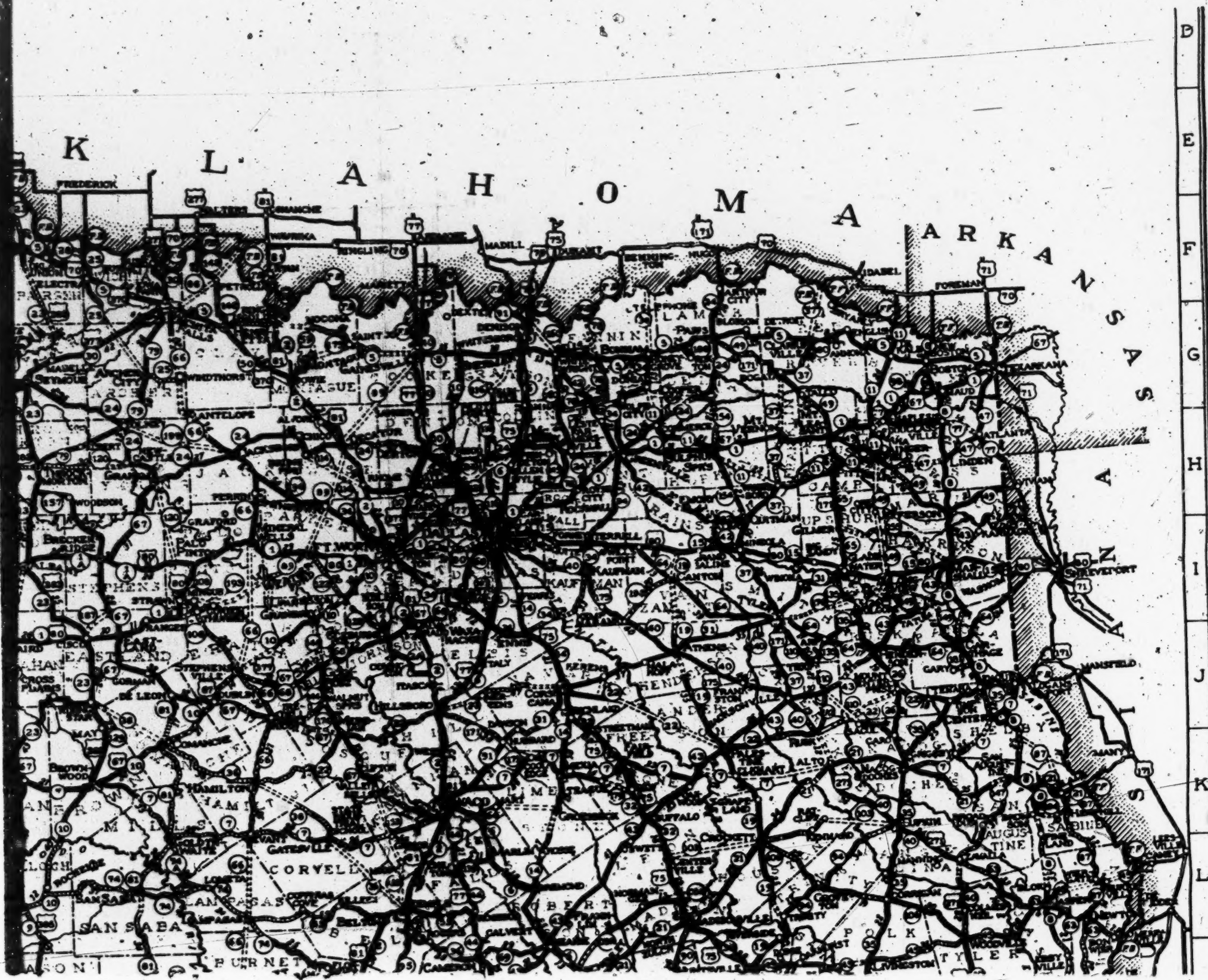
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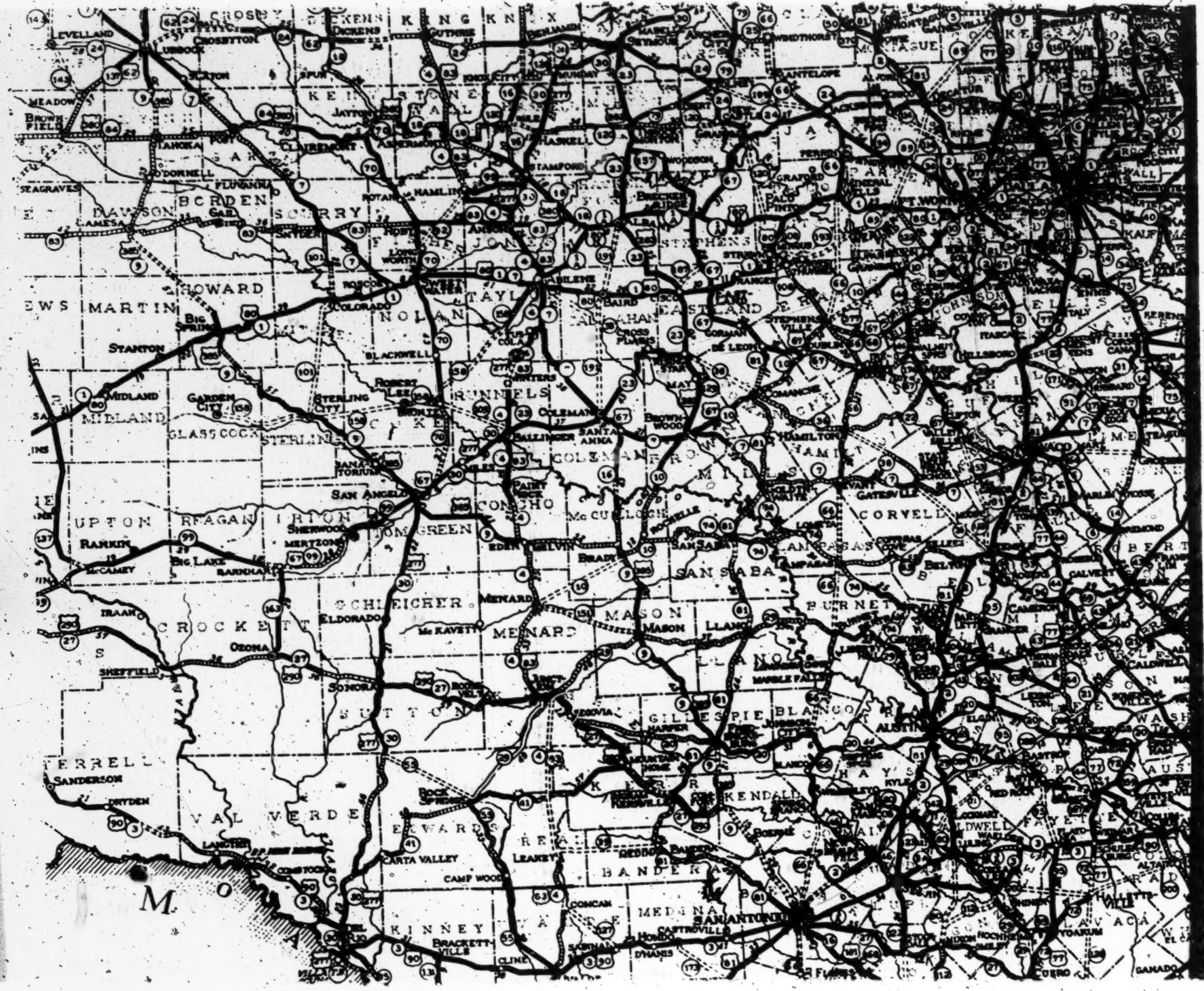
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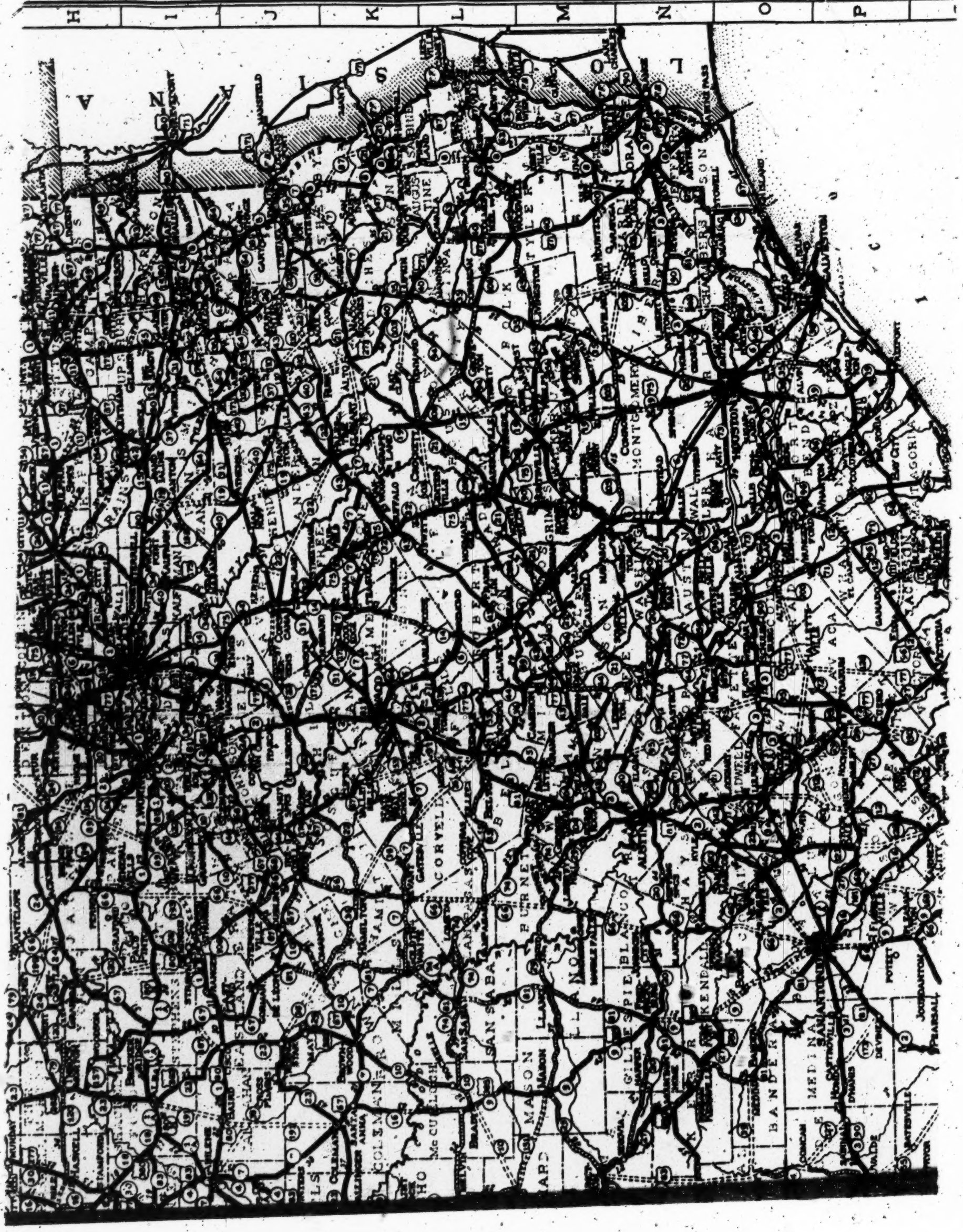
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CAMERON
HIDALGO
STARR
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WEBB
DUVAL
JIM WELLS
BROOKS
KENEDY
KLEBERG
KINNEY
MAVERICK
ZAVALA
FRIO
MEDINA
BANDERA
KERR
GILLESPIE
KIMBLE
MASON
MCCULLOCH
SAN SABA
MILLS
LAMPASAS
BURNET
LLANO
MILAM
WILLIAMSON
BELL
CORYELL
HAMILTON
COMANCHE
BOSQUE
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ERATH
BROWN
COLEMAN
RUNNELS
CONCHO
TOM GREEN
IRION
REAGAN
UPTON
CROCKETT
SUTTON
EDWARDS
REAL
KERR
KENDALL
GILLESPIE
BLANCO
HAYS
CALDWELL
GUADALUPE
COMAL
BEXAR
WILSON
KARNES
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VICTORIA
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LAVACA
GONZALES
CALHOUN
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GALVESTON
BRAZORIA
FORT BEND
CHAMBERS
LIBERTY
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JEFFERSON
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NEWTON
JASPER
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SAN JACINTO
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LIMESTONE
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FRANKLIN
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KAUFMAN
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TARRANT
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FANNIN
LAMAR
DELTA
Corpus Christi
Alice
Kingsville
Robstown
Sinton
Rockport
Aransas Pass
Port Aransas
Beeville
Goliad
Victoria
Port Lavaca
Bay City
Matagorda
Angleton
Galveston
Texas City
Houston
Pasadena
Baytown
La Porte
Deer Park
Pearland
Alvin
Liberty
Beaumont
Port Arthur
Orange
Sour Lake
Silsbee
Kountze
Woodville
Jasper
Newton
Lufkin
Nacogdoches
Center
Carthage
Henderson
Longview
Marshall
Jefferson
Texarkana
Atlanta
Linden
Daingerfield
Mount Pleasant
Sulphur Springs
Paris
Clarksville
Cleburne
Granbury
Weatherford
Mineral Wells
Stephenville
Hamilton
Brownwood
Coleman
Ballinger
San Angelo
Eldorado
Ozona
Sonora
Del Rio
Uvalde
Hondo
Pleasanton
Jourdanton
Poteet
Floresville
Seguin
New Braunfels
San Marcos
Lockhart
Luling
Gonzales
Yoakum
Cuero
Edna
Bay City
Wharton
El Campo
Columbus
La Grange
Bastrop
Smithville
Giddings
Caldwell
Hearne
Bryan
College Station
Navasota
Madisonville
Huntsville
Conroe
Cleveland
Dayton
Anahuac
Winnie
Port Neches
Groves
Nederland
Texas City
La Marque
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Pearland
Friendswood
Webster
Seabrook
Kemah
Clear Lake City
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Kemah
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Deer Park
La Porte
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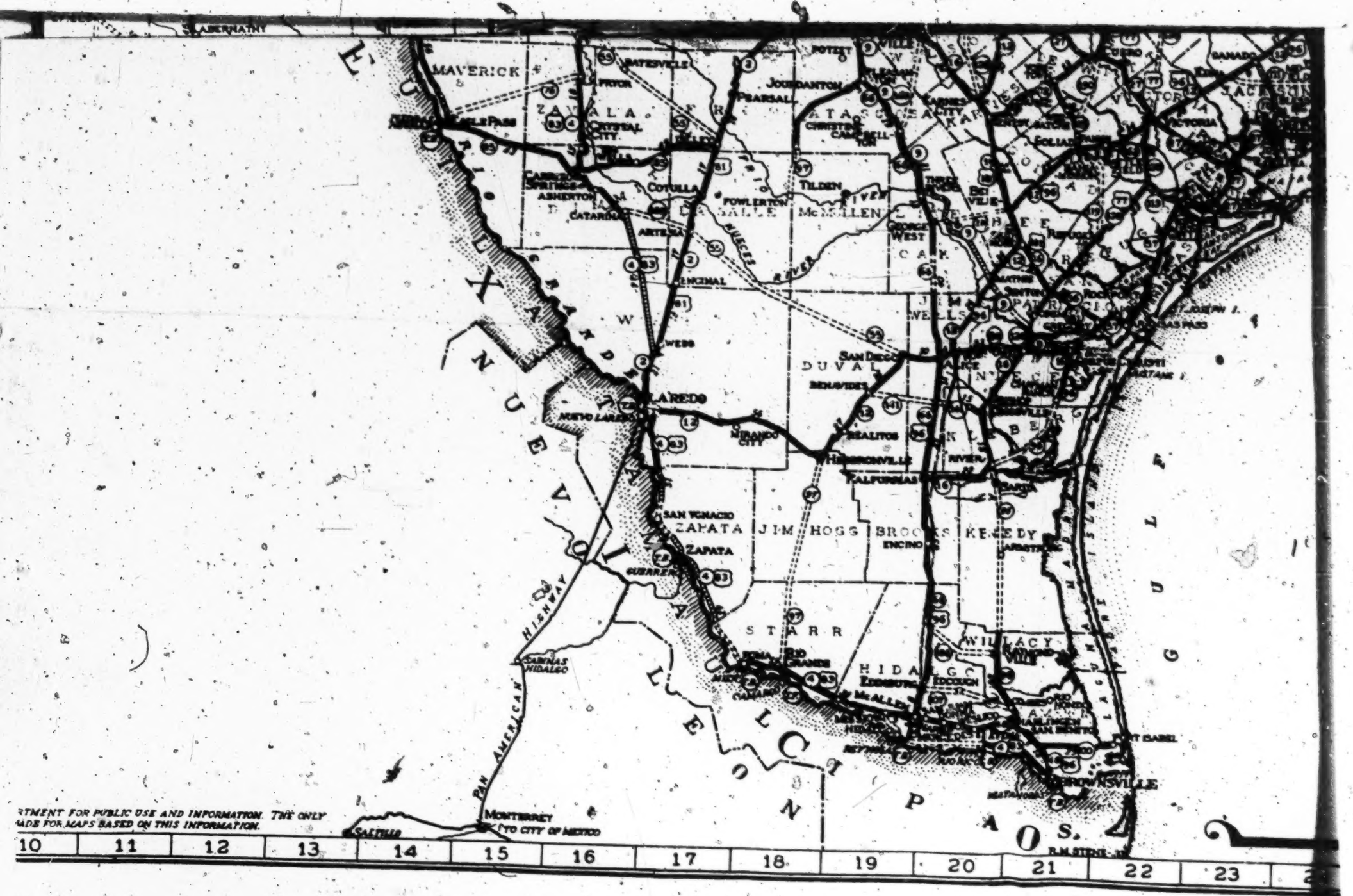
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CAMARGO
SABINAS HIDALGO
MONTERREY
SALTILLO
TO CITY OF MEXICO
PAN AMERICAN HIGHWAY
RIO GRANDE
LA SALLE
MCMULLEN
DUVAL
JIM HOGG
BROOKS
KENEDY
WILLACY
HIDALGO
EDINBURG
McALLEN
BROWNSVILLE
MATAMOROS
PORT ISABEL
SAN BENITO
HARLINGEN
RAYMONDVILLE
WILLACY
CAMERON
ENCINO
REALITOS
HEBBRONVILLE
CALLAGHAN
SAN DIEGO
ARTESIA
COTULLA
TILDEN
FOWLERTON
CARRIZO SPRINGS
ASHERTON
CATARINA
PEARSALL
JOURDANTON
POTEET
PRYOR
BATESVILLE
CRYSTAL CITY
EAGLE PASS
ALPINE
MARFA
SANDERSON
DEL RIO
ROCKSPRINGS
SONORA
OZONA
MENARD
JUNCTION
KERRVILLE
BANDERA
HONDO
CASTROVILLE
D'HANIS
YANCEY
LA PRYOR
ARTESIA WELLS
GEORGE WEST
CHRISTINE
CARRIZO SPRINGS
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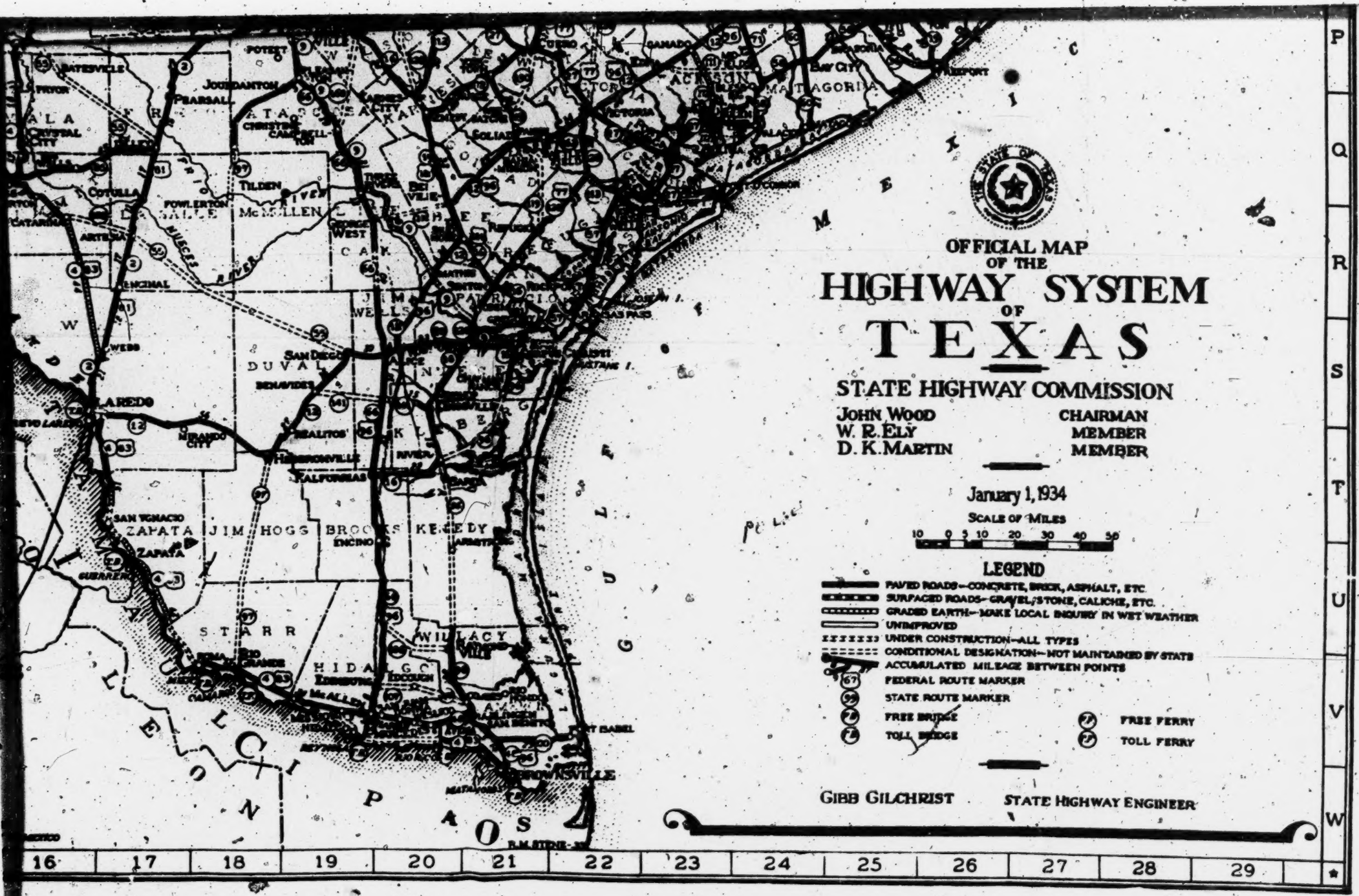
OFFICIAL MAP
OF THE
HIGHWAY SYSTEM
OF
TEXAS
STATE HIGHWAY COMMISSION
JOHN WOOD CHAIRMAN
W. R. ELY MEMBER
D. K. MARTIN MEMBER
January 1, 1934
SCALE OF MILES
10 0 5 10 20 30 40 50
LEGEND
PAVED ROADS—CONCRETE, BRICK, ASPHALT, ETC.
SURFACED ROADS—GRAVEL, STONE, CALICHE, ETC.
GRADED EARTH—MAKE LOCAL INQUIRY IN WET WEATHER
UNIMPROVED
UNDER CONSTRUCTION—ALL TYPES
CONDITIONAL DESIGNATION—NOT MAINTAINED BY STATE
ACCUMULATED MILEAGE BETWEEN POINTS
FEDERAL ROUTE MARKER
STATE ROUTE MARKER
FREE BRIDGE
TOLL BRIDGE
FREE FERRY
TOLL FERRY
GIBB GILCHRIST STATE HIGHWAY ENGINEER
MEXICO
GULF OF MEXICO
ZAPATA
JIM HOGS
BROOKS
KENEDY
STARR
WILLACY
HIDALGO
CAMERON
LAREDO
BROWNSVILLE
P Q R S T U V W
16 17 18 19 20 21 22 23 24 25 26 27 28 29

EXHIBIT "A".

ASSETS:

Cash on hand.	$1,000.00
Cold Storage Machinery & Equipment.	5,000.00
Plant Farm & Equipment	1,000.00
Farm	13,000.00
Accounts Receivable.	3,500.00
Truck Equipment	4,000.00
	$27,500.00

RECEIVED
MAY 1 1934
RAILROAD COMMISSION
Motor Transportation Division

LIABILITIES:

Truck	$ 500.00
Bank Note	450.00
Farm Loan	3,000.00
	$3,950.00

Exhibit "B" COMMON CARRIER CERTIFICATE NO. _____

1041

RAILROAD COMMISSION OF TEXAS
MOTOR TRANSPORTATION DIVISION
AUSTIN, TEXAS.

Operator A. E. McDonald.

Street _____ Town Waxahachie, Texas.

List of all equipment operated under above Certificate. Date 1 193__

Trucks and trucks and trailers where the two combined have only one carrying body.

TRUCK OR TRAILER	NAME OF MANUFACTURER	MOTOR NUMBER	TRUCK NO.	CAPACITY
Truck- Trailer	Chevrolet (1933)	3673866	1	1½ tons
" "	" (1932)	T3357436	2	1½ tons
" "	G M C (1933)	P878251	3	1½ tons

WEIGHT	LENGTH	WIDTH	HEIGHT UNLOADED
7000	28 ft.	7 ft.	8 feet
"	"	"	
"	"	"	

RECEIVED
MAY 1, 1934
RAILROAD COMMISSION
Motor Transportation Division

"	"	GMC	(1933)	P878251	3	1½ tons

WEIGHT	LENGTH	WIDTH	HEIGHT UNLOADED
7000	28 ft.	7 ft.	8 feet
"	"	"	
"	"	"	

RECEIVED
MAY 7 1934
RAILROAD COMMISSION
Motor Transportation Division

STATE OF TEXAS

COUNTY OF _____

_____
MOTOR CARRIER SIGN HERE

Before me, the undersigned authority, on this _____ day of _____ 193__. personally appeared _____ who being by me duly sworn states that the aboveand foregoing report is true and correct, and that each unit described therein is legally owned by the owner and holder of the above Certificate.

Witness my hand and the seal of office this _____ day of _____ 193__.

_____
NOTARY PUBLIC

_____ COUNTY, TEXAS

ADDRESS: Motor Transportation Division, Austin, Texas.

7. Exhibit "C" Description of all other property owned and used in motor carrier service including repair shops, terminal and station facilities.

Repair Shops + Docks at Waxahachie Texas.

If this space is not sufficient, give complete description of all property on same size sheet as this, marked Exhibit "C," indicating that fact in this space.

8. Exhibit "D." Complete routes over which it is desired to operate.

Attach thereto a complete and accurately printed map or plat, showing on a large scale: (1) All highways traversed, giving State Highway Numbers; (2) Give accurately and in detail the names and addresses of all transportation companies, railroad, interurban, common carrier motor carriers, and contract carriers serving all or any portion of the territory covered by this application. Use same sized sheet of paper as this and attach to this application, marked Exhibit "D."

9. Exhibit "E." Schedule of proposed service, showing the time for departure and arrival at terminal and way stations. Attach sheet, same size as this, showing full details, marked Exhibit "E." If this is an application for additional service, then give schedules of existing service in detail.

R. E. McDonald

Applicant.

Dated at Dallas, Texas, Texas, April 30, 1934.

AFFIDAVIT

State of TEXAS

County of DALLAS

I, A. E. McDonald (Applicant), do solemnly swear that the facts stated in the foregoing application and all exhibits attached thereto are ture and correct and that said statement of facts constitutes a complete statement of the matters to which it relates.

R. E. McDonald

Subscribed and sworn to before me this the 30th day of April 1934.

[illegible]

plication, marked Exhibit "D."

9. Exhibit "E." Schedule of proposed service, showing the time for departure and arrival at terminal and way stations. Attach sheet, same size as this, showing full details, marked Exhibit "E." If this is an application for additional service, then give schedules of existing service in detail.

R E McDonald

Applicant.

Dated at Dallas, Texas, Texas, April 30, 1934.

AFFIDAVIT

State of TEXAS }
County of DALLAS }

I, A. E. McDonald (Applicant), do solemnly swear that the facts stated in the foregoing application and all exhibits attached thereto are ture and correct and that said statement of facts constitutes a complete statement of the matters to which it relates.

R E McDonald

Subscribed and sworn to before me this the 30th day of April, 1934.

Carl L Finney

Notary Public Dallas County, Texas

*If applicant is a corporation, the affidavit must be made by the president or other officer authorized by the by-laws of the corporation to act for it. If applicant is a firm or association, some member of such firm or association authorized to make such affidavit shall execute same.

OVER

Sec. 10. (Chapter 314, Acts of the 41st Legislature, 1929.) No application for a certificate of public convenience and necessity shall be considered by said Commission unless it be in writing and set forth the following facts:

(1) It shall contain the name and address of the applicant and the names and address of its officers, if any, and shall give full information concerning the financial condition and physical properties of the applicant.

(2) The complete route or routes over which the applicant desires to operate, together with a description of each vehicle which the applicant intends to use.

(3) A proposed time schedule and a schedule of rates to be charged between the several points or localities to be served.

(4) It shall be accompanied by a plat or map showing the route or routes over which the applicant desires to operate, on which plat or map shall be delineated the line or lines of any existing transportation company or companies serving such territory, with the names and addresses of the owner or owners thereof, and shall point out the inadequacy of existing transportation facilities or services, and shall specify wherein additional facilities or service are required and would be secured by the granting of said application.

[fol. 15] EXHIBIT E

ORDER DENYING INTERSTATE COMMON CARRIER CERTIFICATE

Railroad Commission of Texas

Motor Transportation Division

Motor Carrier Docket No. 1739

Application of A. E. McDonald, Waxahachie, Texas, for a Certificate Authorizing the Operation of a Common Carrier Motor Carrier Service Interstate from Waxahachie to Points in Oklahoma Via Dallas and Denison Over State Highway No. 6 and Via Fort Worth Over State Highway No. 34 Thence to Denton Over State Highway No. 10 and Thence to Oklahoma State Line Via Gainesville Over State Highway No. 40 from Waxahachie to Galveston Over State Highway No. 34 to Ennis Thence to Houston and Galveston Over Federal Highway No. 75; from Waxahachie to Hillsboro Over State Highway No. 6 Thence to San Antonio Over State Highway No. 2 and Thence to McAllen Over State Highway No. 66; from Waxahachie to Galveston Over State Highway No. 6 and 2 to Waco Thence to Galveston Via Houston Over State Highway No. 6.

Austin, Texas, July 14, 1934.

Opinion & Order

By the Commission:

On May 15, 1934, the above styled application was submitted to the consideration of the Railroad Commission in its Hearing Room in the Capitol in Austin, Texas, pursuant to notices having been issued and filed herein to all interested parties as well as the public in general according to law.

On 14th day of July 1934, the Railroad Commission took up for consideration the above styled application and after duly considering the facts, the law and its own rules and regula- reaches the following conclusion to-wit:

[fol. 16] The Commission has had before it during the last few months a number of applications of the same nature

as this, in which the applicants have asked for the privilege of using many of the principal highways of the state in the same manner as this applicant. In order for the Commission to determine whether, in its opinion, certain highways of this state are carrying all of the truck traffic that can be safely entrusted on said highways without unreasonably interfering with the use thereof by the general public, the Commission has held a number of hearings in various portions of the state in order that local officials, who are familiar with the condition of the highways in their respective localities and the amount of traffic that such highways are forced to carry, might be able to testify under oath concerning the same. Probably more than a hundred County Judges, County Commissioners, County Attorneys, Mayors, Members of the City Councils, Managers of Chambers of Commerce, School Superintendents, newspaper editors, merchants and other citizens have testified at these hearings against the granting of additional truck permits over highways through their cities and counties.

Many of these witnesses whose characters and reputations were not questioned and whose interests were apparently unselfish, have testified that owing to the fact that heavy truck traffic, and especially at night, makes the highways leading into the larger centers of population so dangerous that such citizens are afraid to use the highways as much as they otherwise would. Some witnesses testified that if business called them to Houston, Dallas, or other large cities and they were unable to conclude their business before dark they spent the night in such cities rather than risk themselves upon the highways after night. Many of these officials and citizen witnesses testified that they themselves and many of the citizens of their communities were deprived of the use of some of the principal highways by reason of heavy traffic over said highways leading to aforesaid centers of population, and that they would use the highways more, especially at night, were it not for the fact that truck traffic thereon caused such hazardous conditions that made them fear for their lives and limbs.

The evidence of these hearings showed conclusively that seasonable movements cause wide fluctuation of traffic. When crops proceed to market, truck traffic, especially, is greatly increased. Such crops, of course, vary in different sections of the state but when being marketed they nat-

urally cause business in all lines to expand during the movement. This state often produces five or six million bales of cotton annually and the bulk of this movement occurs during the period from September through the following four months. Dallas is one of the largest inland cotton concentration points in the world, while Houston and Galveston are two of the principal cotton shipping ports. Hundreds of thousands of bales of cotton have, in the past, moved by truck over the highways between Dallas and Houston while still many more bales passed through the State of Texas from points in Oklahoma and Arkansas destined for these port cities. It is true that business conditions over the country have slowed down truck and other traffic to some extent but the Commission has received a mandate from the Legislature to not only take into consideration present burdens but also future burdens which the state highways will be called upon to assume. Certificates or permits granted by the Commission are more or less of a permanent nature so long as the holders thereof comply with the law and with the rules and regulations of the Commission; therefore, to grant a certificate or permit during a light season or during a temporary business depression would result in adding traffic burdens to highways during busy seasons or when business conditions again return to normalcy. It is only natural to assume that the population of Texas will continue to increase and that with such increased population the highways will be called upon to assume more and more truck and motor traffic of vari-
[fol. 17] ous kinds. The fact that truck traffic uses the highways to the maximum at night only adds to their hazards and these hazards are magnified in the case of those citizens whose duties prevent them from enjoying the highways for recreation purposes during daylight hours and who, perhaps, are not expert drivers at night. The large toll of deaths and injuries on the most highly improved highways, in which trucks are involved, leads the Commission to place even more credence to the evidence gathered at the hearings for the purpose of ascertaining the condition of such highways, and is cumulative of the testimony of the many disinterested citizen witnesses and officials, that these highways are already carrying as much or more truck traffic than is reasonably safe for the general public.

Portions of many of the principal highways contain narrow paving surfaces that become rough and uneven from traffic and whose dirt shoulders present unusual hazards, especially during fall, winter and spring, which are rainy seasons, and when they are used to their maximum by heavy traffic in moving the cotton crop. The evidence conclusively showed that it was impossible for an ordinary passenger car and a truck of the width permitted under the general laws of this state to pass each other upon the roads of this character without one or both of such vehicles being compelled to traverse the dirt shoulder. It was further shown that trucks, by reason of their weight, were more jealous of holding the center of the road during wet weather than at other times as they were likely to become more unmanageable when turning out upon the wet dirt shoulders and this naturally adds to the hazards of the citizens using the highways for pleasure or in the ordinary pursuit of their business.

While the Commission has not attempted to assume jurisdiction over truck operations through incorporated cities and towns, the evidence has shown that usually the principal and often the only improved street is the one over which practically all of the through truck traffic flows. Other unimproved streets in many of the smaller cities and towns could not possibly carry this heavy traffic without being practically destroyed. These cities and towns are financially unable to properly police traffic and it would prove ruinous for them to be called upon to assume the burden of reconstructing their streets if the latter are destroyed by traffic. In many instances schools, churches, business houses and gins are located alongside of or closely adjacent to the state highway and it is necessary for citizens and children to use these highways daily, and they should not be called upon to risk their lives and limbs by having placed upon those highways such additional traffic as would unreasonably interfere with their use by such citizens and children.

There are at this time some five hundred trucks authorized to be operated out of Dallas as common carriers and one hundred and twenty-two trucks as contract carriers, while there are some four hundred common carriers operating out of Houston and fifty or sixty contract carrier trucks. In addition there are several hundred special com-

modity trucks operating out of Dallas and Houston, engaged in the transportation of various commodities but principally that of oil field equipment. In addition to these motor carrier trucks, the Highway Department records show that more than 120,000 trucks, 19,000 trailers and 883,000 passenger cars had been registered by that Department up to about the middle of May of this year.

[fol. 18] It is Therefore, Ordered Adjudged and Decreed by the Railroad Commission of Texas, that the application of A. E. McDonald, Waxahachie, Texas, for a certificate authorizing the operation of a Common Carrier Motor Carrier Service Interstate from Waxahachie to points in Oklahoma via Dallas and Denison over State Highway No. 6; and via Fort Worth over State Highway No. 34, thence to Denton over State Highway No. 10, and thence to Oklahoma State Line Via Gainesville over State Highway No. 40; from Waxahachie to Galveston over State Highway No. 34 to Ennis thence to Houston and Galveston over Federal Highway No. 75; From Waxahachie to Hillsboro over State Highway No. 6, thence to San Antonio over State Highway No. 2 and thence to McAllen over State Highway No. 66; From Waxahachie to Galveston over State Highway No. 6 and 2; Waco Thence to Galveston Via Houston over State Highway No. 6, be and the same is hereby denied. This order subject to the further orders of the Railroad Commission.

Railroad Commission of Texas, —— ——, Chairman; C. V. Terrell, Ernest O. Thompson, Commissioners.

Attest: C. R. McNamee, Acting Secretary.

VBG: s.

(Here follow four photolithographs, side folios 19, 20, 21 and 21½)

EXHIBIT J

T178-622-1M

COMMON CARRIER MOTOR OPERATOR'S APPLICATION TO OPERATE INTRASTATE

Note: Application will not be received and filed unless all requirements and instructions are complied with. Read application blank carefully before filling out.

Leave this Page Blank
to be used by the Commission.

Application No. 1210 Certificate No.

Docket No. 1920

Applicant's Name A. E. McDONALD

Address (Street)

(Town) Waxahachie, Texas

(State)

RECEIVED
SEP 4 1935
RAILROAD COMMISSION
Motor Transportation Division

RECORD

Filed 9-4-35

Set for Hearing

Place

Heard

Certificate Issued

Ins. Filed Name of Ins. Co.

Policy No. Date of Expiration

Terminal From Houston to Wichita Falls-Abilene

T178-625-1M

COMMON CARRIER MOTOR OPERATOR'S APPLICATION TO OPERATE INTRASTATE

Note: Application will not be received and filed unless all requirements and instructions are complied with. Read application blank carefully before filling out.

Leave this Page Blank
to be used by the Commission.

Application No. 1210 Certificate No.

Docket No. 1920

Applicant's Name A. E. McDONALD

Address (Street)

(Town) Waxahachie, Texas

(State)

RECORD

RECEIVED
SEP 4 1935
RAILROAD COMMISSION
Motor Transportation Division

Filed 9-4-35

Set for Hearing

Place

Heard

Certificate Issued

Ins. Filed Name of Ins. Co.

Policy No. Date of Expiration

Termini: From Houston to Wichita Falls-Abilene

Other information:

Filing Fee $5.00 Cov # 2617
9-4-35

Application No. _____
(Leave Blank)

APPLICATION FOR CERTIFICATE OF CONVENIENCE AND NECESSITY TO OPERATE A COMMON CARRIER MOTOR CARRIER

BEFORE THE
RAILROAD COMMISSION OF TEXAS

MOTOR TRANSPORTATION DIVISION

To the Railroad Commission of Texas:

The undersigned hereby makes application for a certificate of convenience and necessity to operate as a Common Carrier Motor Carrier within the State of Texas, and respectfully submits the following facts required by law.

1. Print in full and accurate name and address of applicant.

A. E. McDONALD,

Print Address: Town Waxahachie ; Street _____ ; State Texas

2. State character of organization, that is whether individual, firm, association or corporation.

Individual

3. Name and address of officers, if a corporation.

4. If an individual, firm, or association, give names and addresses of all parties owning an interest in the motor freight truck line or organization.

5. Exhibit "A." Give a complete statement of financial condition of applicant, showing all assets of every kind and character and present value thereof, and all liabilities of every kind and character, including debts secured by mortgages and not secured, judgments, current indebtedness and all other liabilities. The statement should be typewritten on same sized sheet as this, marked Exhibit "A" and attached to this application.

6. Exhibit "B." Number of trucks to be operated Four (4)

MOTOR TRANSPORTATION DIVISION

To the Railroad Commission of Texas:

The undersigned hereby makes application for a certificate of convenience and necessity to operate as a Common Carrier Motor Carrier within the State of Texas, and respectfully submits the following facts required by law.

1. Print in full and accurate name and address of applicant.

A. E. McDONALD,

Print Address: Town Waxahachie ; Street ; State Texas

2. State character of organization, that is whether individual, firm, association or corporation.

Individual

3. Name and address of officers, if a corporation.

4. If an individual, firm, or association, give names and addresses of all parties owning an interest in the motor freight truck line or organization.

5. Exhibit "A." Give a complete statement of financial condition of applicant, showing all assets of every kind and character and present value thereof, and all liabilities of every kind and character, including debts secured by mortgages and not secured, judgments, current indebtedness and all other liabilities. The statement should be typewritten on same sized sheet as this, marked Exhibit "A" and attached to this application.

6. Exhibit "B." Number of trucks to be operated Four (4)

Give complete detailed information as follows regarding each truck operated, or to be operated, including reserve equipment:

(a) Name of manufacturer See Exhibit "B" Motor No.

(b) Style and yearly model

(c) Capacity in tons

(d) Motor Number

(e) State License Number

(f) Date purchased new

(g) Date purchased by applicant

(h) Weight

(i) Length

(j) Width

(k) Height unloaded

If this space is not sufficient to describe all trucks, make typewritten sheet, same size as this, and attach to this application marked Exhibit "B." If it is attached as an exhibit, indicate that fact in the blank space here, listing all trucks on the exhibit, using above form.

EXHIBIT "A"

FINANCIAL STATEMENT.

Assets:	
Cold storage plant and equipment.....	$5,000.00
Trucks	8,000.00
Notes and accounts receivable.....	7,000.00
Real estate, (Farm land).....	13,000.00
Plant farm, shipping and packing sheds...	2,000.00
Real estate, (Homestead).....	6,000.00
Stocks and bonds.....	2,500.00
Cash on hand and in bank.....	1,500.00
	$45,000.00
Liabilities:	
Note on farm land.....	4,000.00
Due on trucks.....	750.00
	$ 4,750.00

RECEIVED
SEP. 4 1935
RAILROAD COMMISSION
Motor Transportation Division

EXHIBIT "B"

_____ CARRIER Certificate Permit No. _____

RAILROAD COMMISSION OF TEXAS
MOTOR TRANSPORTATION DIVISION
AUSTIN, TEXAS

Operator A. K. McDONALD

Street _____ Town Waxahachie, Texas

List of all equipment operated under above permit. Date 8/30/35, 193_

Trucks and trucks and trailers where the two combined have only one freight carrying body.

TRUCK OR TRAILER	NAME OF MANUFACTURER	MOTOR NUMBER	TRUCK NO.	CAPACITY
One 1934 Model	Chevrolet Truck, delivery type. (Bob-tail)			
One 1935	Ford Truck, delivery type. (Bob-tail)			
One 1934	Ford Truck, delivery type. (Bob-tail)			
One 1933	Diamond-"T", delivery type. (Bob-tail)			

Motor numbers will be furnished at or before the hearing.

WEIGHT	LENGTH	WIDTH	HEIGHT UNLOADED

Length, width and height of above trucks are all within the statutory limits. Weights will be furnished at or before the hearing.

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Motor Transportation Division

One 1934 Model Chevrolet Truck, delivery type (Bob-tail)				
One 1935 Ford Truck, delivery type. (Bob-tail)				
One 1934 Ford Truck, delivery type. (Bob-tail)				
One 1933 Diamond-"T", delivery type. (Bob-tail)				

Motor numbers will be furnished at or before the hearing.

WEIGHT	LENGTH	WIDTH	HEIGHT UNLOADED

Length, width and height of above trucks are all within the statutory limits. Weights will be furnished at or before the hearing.

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STATE OF TEXAS
COUNTY OF Travis

T. S. Christopher
(Motor Carrier sign here)

Before me, the undersigned authority, on this 30 day of August 193 5, personally appeared T. S. Christopher who being by me duly sworn states that the above and foregoing report is true and correct, and that each unit described therein is legally owned by the owner and holder of the above permit.

Witness my hand and seal of office this 30 day of August, 193 5

NOTARY PUBLIC Erin Jones Couch

Travis COUNTY, TEXAS

21½

180

[fol. 22] Exhibit "D"

Route Over Which Applicant Desires to Operate

1. Houston to Fort Worth and Dallas via Hempstead, Navasota, Bryan, Hearne, Waco, and Hillsboro, with service to all intermediate points, using State Highways Nos. 6, 2 and 34, and No. 1.

2. Bremond to Waxahachie via Groesbeck, Mexia, Corsicana and Ennis, using State Highways Nos. 14 and 34.

3. Waxahachie to Hillsboro via Alvarado and Itasca, using State Highways Nos. 68 and 2.

4. Fort Worth to Wichita Falls via Jacksboro, using State Highway No. 34.

5. Fort Worth to Big Spring via Weatherford, Ranger, Abilene and Sweetwater, using State Highway No. 1.

6. Waxahachie to Italy, to Frost, to Blooming Grove, to Bird, to Rankin, to Bardwell, to Avalon, to Nash, to Waxahachie, using all undesignated State Highways.

7. Waxahachie to Rocket, to Boyce, to Ferris, to Waxahachie, using all undesignated State Highways.

8. Waxahachie to Ovillia, Red Oak, to Waxahachie, using all undesignated State Highways.

9. We suggest as an alternative route from Weatherford to Ranger, State Highway No. 89, and as an alternative from Dallas to Fort Worth, State Highway No. 115, just north of the Trinity River.

10. The service proposed to be rendered along all of the routes described is intended to include all cities and towns along the Highways mentioned, although not specifically named.

[fol. 23] (2)

Sproles Motor Freight Lines
H. & N. T. Motor Freight Lines
English Motor Freight Lines
G. & H. Motor Freight Lines
Central Motor Freight Lines
Southern Pacific Railroad
Missouri Pacific Railroad

Missouri, Kansas & Texas Railroad
Texas & Pacific Railroad
Northern Texas Traction Company

(3)

This application is intended primarily to serve the applicant's own needs in delivering his own perishable merchandise to his customers along the routes described, from whom he either collects his transportation charge either directly or indirectly by selling his own merchandise to his customers along the routes described at prices higher than the price charged in Waxahachie. Applicant maintains cold storage plants at Waxahachie and handles fruits, fresh vegetables and general produce, all of a perishable nature. The transportation required is of such nature that existing common carriers cannot perform the service due to the quantities in which it is handled, the nature of the commodity itself, it being perishable and requiring quick delivery from the cold storage plant, and the nature of the applicant's business requires store-door deliveries at or near the opening hours of his various customers. Furthermore, many of the points along the routes described have no other common carrier service of any kind.

[fol. 24] Exhibit "E"

Schedule of Proposed Service

No regular schedules will be operated. The purpose of this application being, primarily, to accommodate the applicant's own business and to enable the applicant to haul his own products and merchandise. The applicant herein is engaged in a wholesale produce fruit and fresh vegetable business distributing his merchandise from his own cold storage plant in Waxahachie along all the routes described.

[fol. 25] Exhibit F

Rates

The rates proposed to be charged for all transportation will be in accordance with the rates promulgated and prescribed by the Railroad Commission of Texas, in accordance with their authority to prescribe maximum and minimum rates under the statutes.

(Here follow three photolithographs, side folios 26, 27 and 28)

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EXHIBIT D

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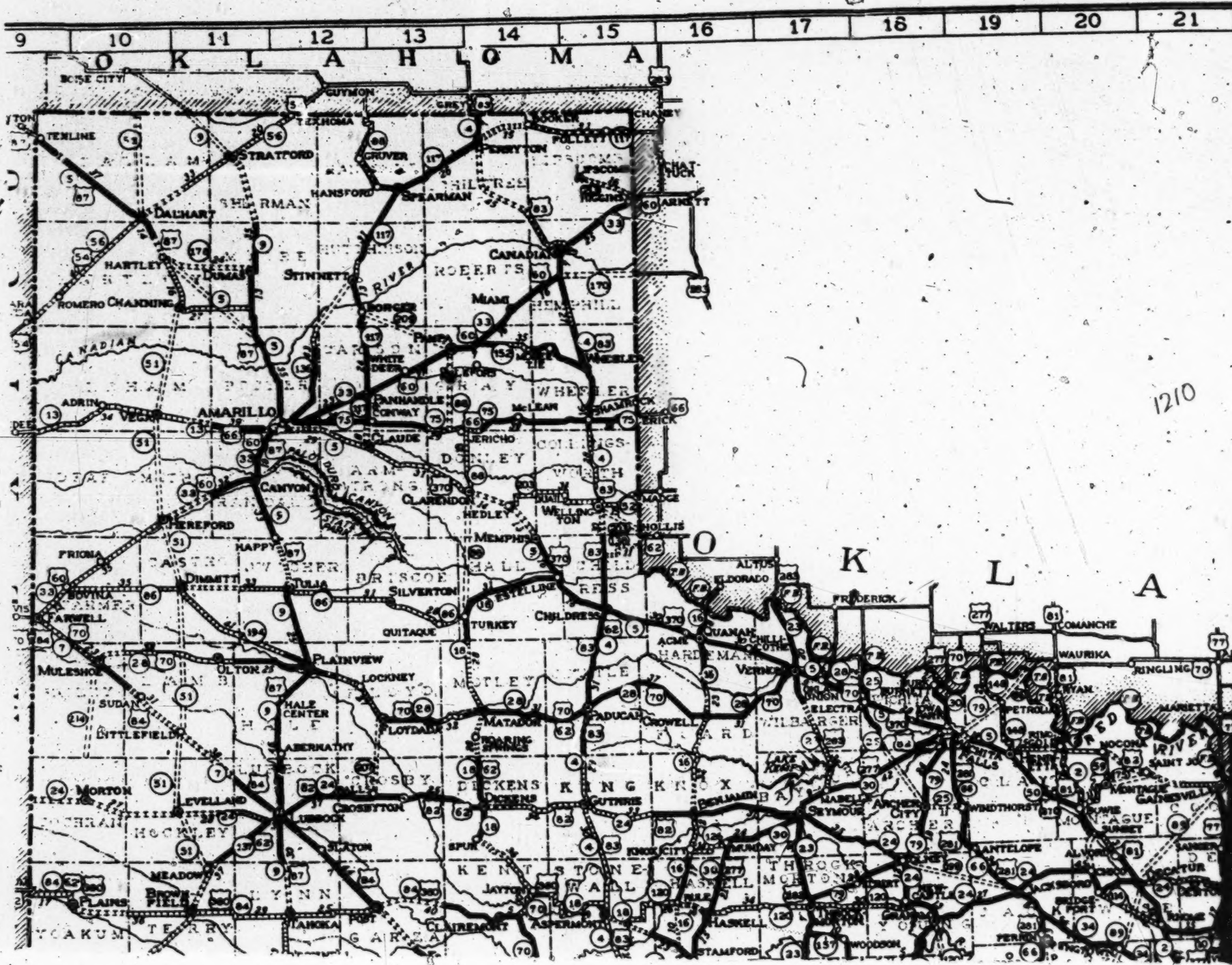

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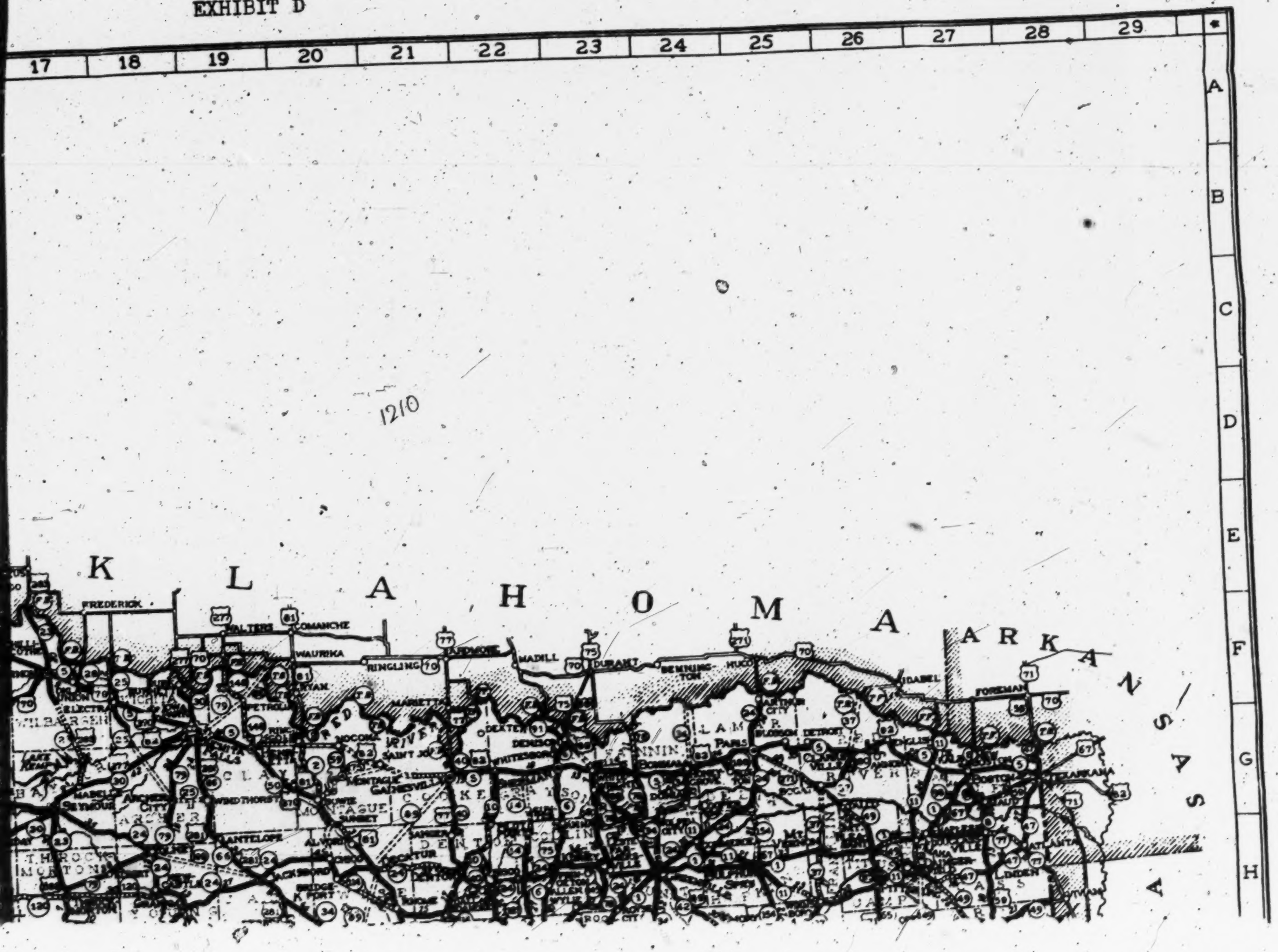

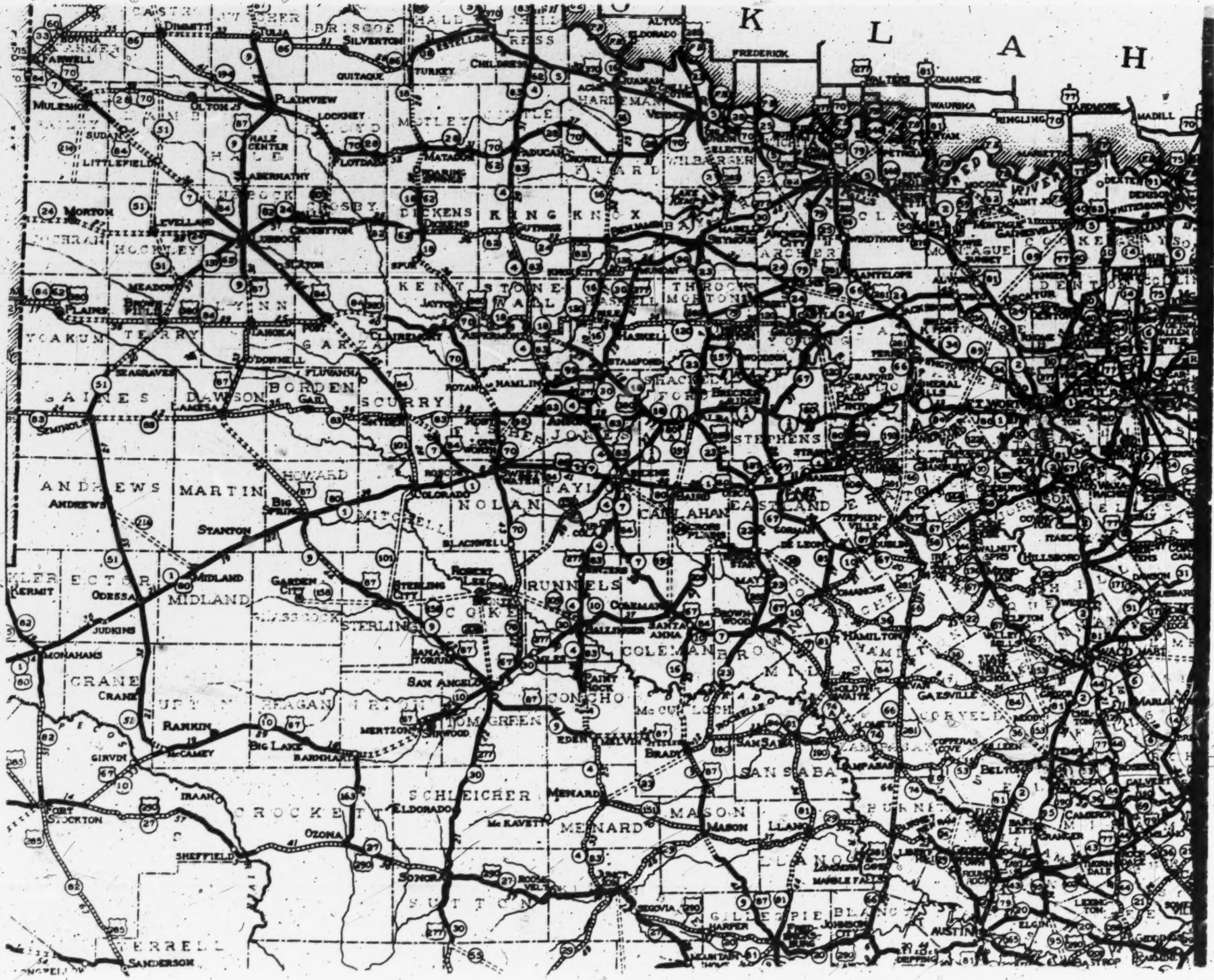
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WICHITA FALLS
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RUNNELS
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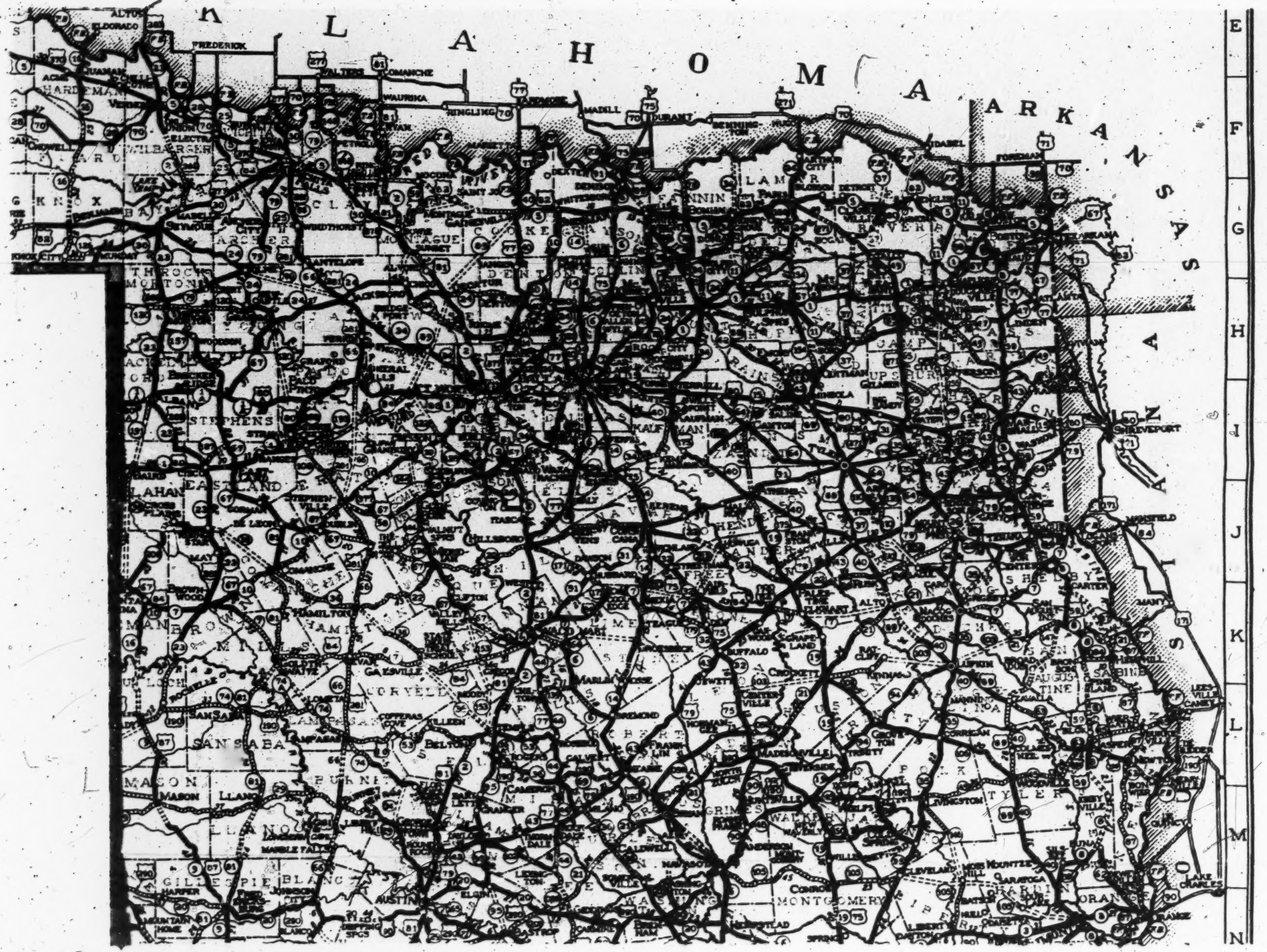
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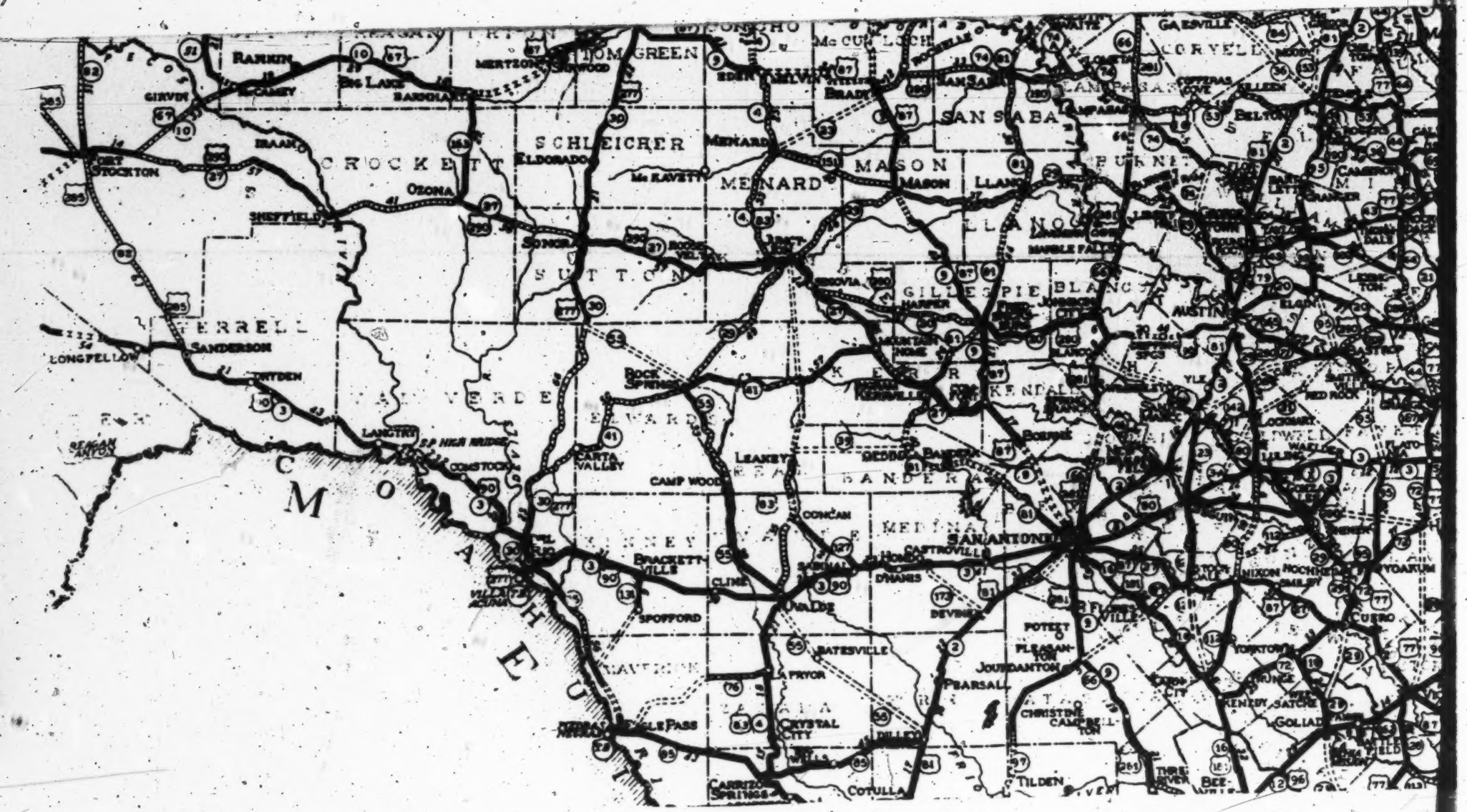
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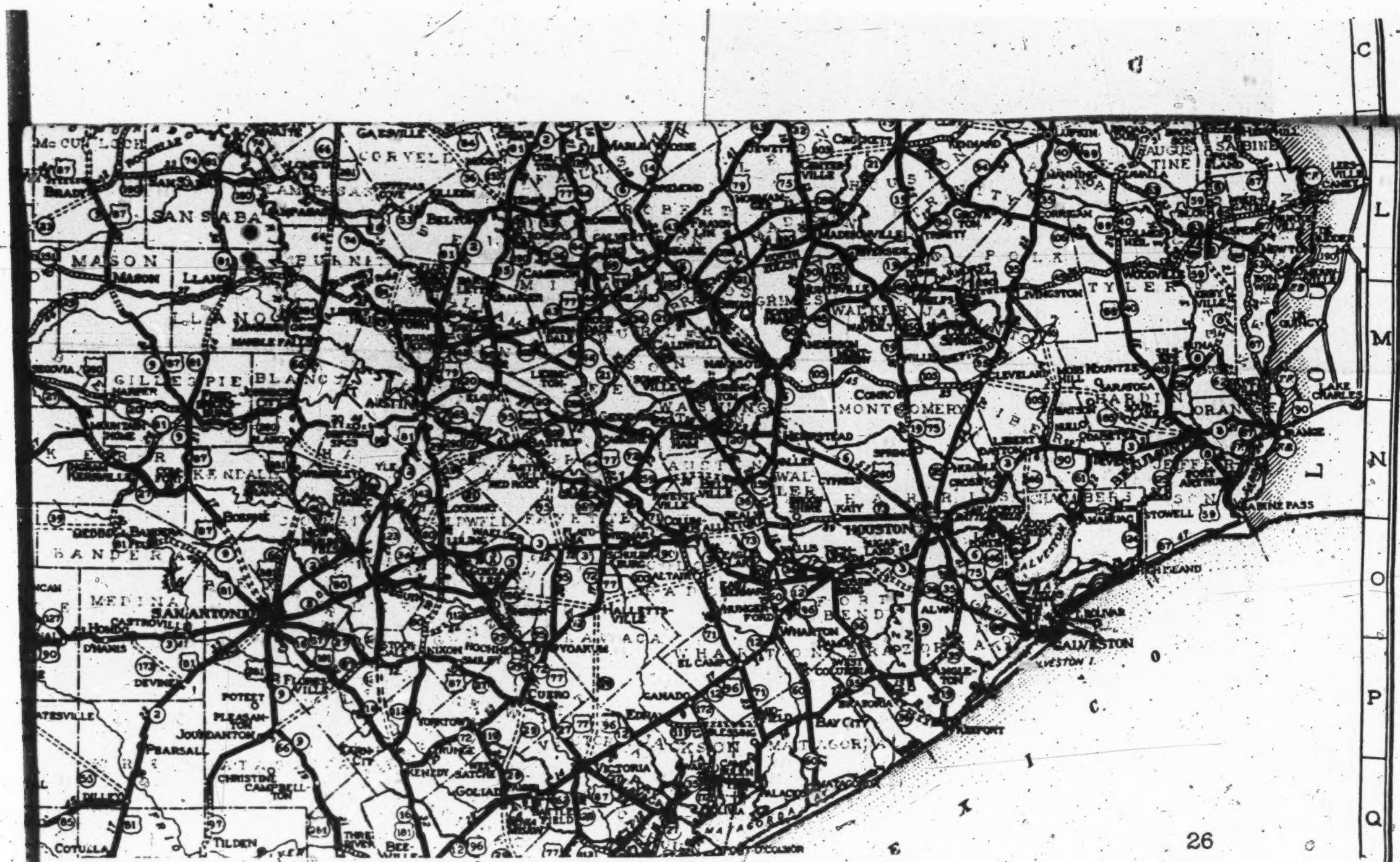
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EL CAMPO
WHARTON
ALVIN
ANGLETON
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7. Exhibit "C." Description of all other property owned and used in motor carrier service including repair shops, terminal and station facilities.

Repair shops are maintained at Waxahachie; no terminal facilities required except at Waxahachie.

If this space is not sufficient, give complete description of all property on same size sheet as this, marked Exhibit "C," indicating that fact in this space.

8. Exhibit "D." Complete route or routes over which it is desired to operate.

Attach thereto a complete and accurately printed map or plat, showing on a large scale: (1) All highways traversed, giving State Highway Numbers; (2) Give accurately and in detail the names and addresses of all transportation companies, railroad, interurban, common carrier motor carriers, and contract carriers serving all or any portion of the territory covered by this application, and (3) If this application covers all or a portion of a territory in which there is already a common carrier in operation, point out in detail the inadequacies of existing transportation facilities. Use same sized sheet of paper as this and attach to this application, marked Exhibit "D." See State Highway Department map attached, marked Exhibit "D".

9. Exhibit "E." Schedule of proposed service, showing the time for departure and arrival at terminal and way stations. Attach sheet, same size as this, showing full details, marked Exhibit "E." If this is an application for additional service, then give schedules of existing service in detail. See Exhibit "E"

10. Exhibit "F." Rates proposed to be charge" on same sized sheet as this. Attach as Exhibit "F" for the transportation of property between the several points and through rates. Rates to be approved by Railroad Commission.

R. E. McDonald
by J. S. Christopher Atty in Fact Applicant.

Dated at Austin, Texas, August 30, 1935. 19

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Motor Transportation Division

AFFIDAVIT

State of Texas
County of Travis

I, T. S. Christopher, Attorney in fact for (Applicant), do solemnly swear that the facts stated in the foregoing application and all exhibits attached thereto are true and correct and that said statement of facts constitutes a complete statement of the matters to which it relates.

T. S. Christopher

Subscribed and sworn to before me this the 30 day of August

or a portion of a territory in which there is already a common carrier in operation, point out in detail the inadequacies of existing transportation facilities. Use same sized sheet of paper as this and attach to this application, marked Exhibit "D." See State Highway Department map attached, marked Exhibit "D".

9. Exhibit "E." Schedule of proposed service, showing the time for departure and arrival at terminal and way stations. Attach sheet, same size as this, showing full details, marked Exhibit "E." If this is an application for additional service, then give schedules of existing service in detail. See Exhibit "E"

10. Exhibit "F." Rates proposed to be charge" on same sized sheet as this. Attach as Exhibit "F'd for the transportation of property between the several points and through rates. Rates to be approved by Railroad Commission.

by: A. E. McDonald
T. S. Christopher, Atty. in fact
Applicant.

Dated at Austin, Texas, August 30, 1935. 19

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RAILROAD COMMISSION
Motor Transportation Division

AFFIDAVIT*

State of Texas
County of Travis

I, T. S. Christopher, Attorney in fact for (Applicant), do solemnly swear that the facts stated in the foregoing application and all exhibits attached thereto are true and correct and that said statement of facts constitutes a complete statement of the matters to which it relates.

T. S. Christopher

Subscribed and sworn to before me this the 30 day of August 1935

Erma Jones Couch

Notary Public Travis County, Texas

*If applicant is a corporation, the affidavit must be made by the president or other officer authorized by the by-laws of the corporation to act for it. If applicant is a firm or association, some member of such firm or association authorized to make such affidavit shall execute same.

(OVER)

Sec. 10. (Chapter 314, Acts of the 41st Legislature, 1929.) No application for a certificate shall be considered by said Commission unless it be in writing and set forth the following facts:

(1) It shall contain the name and address of the applicant and the names and address of its officers, if any, and shall give full information concerning the financial condition and physical properties of the applicant.

(2) The complete route or routes over which the applicant desires to operate, together with a description of each vehicle which the applicant intends to use.

(3) A proposed time schedule to be charged between the several points or localities to be served.

(4) It shall be accompanied by a plat or map showing the route or routes over which the applicant desires to operate, on which plat or map shall be delineated the line or lines of any existing transportation company or companies serving such territory, with the names and addresses of the owner or owners thereof.

[fols. 29-30] THE STATE OF TEXAS,
County of Travis:

Before me, the undersigned authority, on this day personally appeared Tilden L. Childs, who being by me duly sworn deposes and says, that he is Assistant Director of the Motor Carrier Division of the Railroad Commission of Texas, and is familiar with the records thereof, and that the foregoing 28 pages are true and correct copies of the records on file in said office.

Tilden L. Childs.

Sworn to and subscribed before me, a Notary public in and for Travis County, Texas, this the 23rd day of January, A. D. 1936. Mene Marie Johnson, Notary Public in and for Travis County, Texas. (Seal.)

[fol. 31] EXHIBIT "D"

[fol. 32] BEFORE THE RAILROAD COMMISSION OF TEXAS, MOTOR TRANSPORTATION DIVISION

Before Mr. Mark Marshall, Director, and Mr. T. L. Childs, Ass't. Director

Hearing Held Austin, Texas, May 15, 1934

Docket No. 1739

Application of A. E. McDONALD, Waxahachie, Texas, for a Certificate Authorizing the Operation of a Common Carrier Motor Carrier Service Interstate from Waxahachie to Points in Oklahoma via Dallas and Denison Over State Highway No. 6 and via Ft. Worth Over State Highway No. 34, Thence to Denton Over State Highway No. 10 and Thence to Oklahoma State Line via Gainesville Over State Highway No. 40; from Waxahachie to Galveston Over State Highway No. 75; from Waxahachie to Hillsboro Over State Highway No. 6; Thence to San Antonio Over State Highway No. 2 and Thence to McAllen Over State Highway No. 66; From Waxahachie to Galveston Over State Highway No. 6 & a to Waco Thence to Galveston via Houston Over State Highway No. 6.

[fol. 33] Appearances:

For the Applicant: Carl Phinney.

For the Protestants: H. L. Smith, for the Rail Lines affected.

Witnesses sworn.

[fol. 34] Transcript of Testimony

Mr. Marshall: We now call for hearing Docket No. 1739, being the Application of A. E. McDonald, Waxahachie, Texas, for a certificate of convenience and necessity authorizing the operation of a common carrier motor carrier service interstate, from Waxahachie to Points in Oklahoma via Dallas and Denison over State Highway No. 6 and via Ft. Worth over state Highway No. 34 thence to Denton over State Highway No. 10 and thence to Oklahoma State Line via Gainesville over State Highway No. 40; from Waxahachie to Galveston over State Highway No. 75; from Waxahachie to Hillsboro over State Highway No. 6; thence to San Antonio over State Highway No. 2 and thence to McAllen over State Highway No. 66; from Waxahachie to Galveston over State Highway No. 6 and 2 to Waco thence to Galveston via Houston over State Highway No. 6.

Mr. Smith: We agree that the testimony concerning these highways will be admitted, that the testimony in the West Texas and Texas Transit Co. et al. will apply so far as these highways are concerned, and admitted that Col. Knapp testimony will go in the record the same as in the Wald and Beard cases.

Mr. Phinney: Is that the same as in the Wald and Beard [fol. 35] cases, the same that Col. Knapp gave them, the same testimony as in the West Texas and Texas Transit Co. cases? (Docket No. 9210—West Texas Motor Freight Lines, etc. Docket No. 9186 and 1675—Wald Transfer Co. and Docket No. 1668—D. A. Beard Truck Line.)

Mr. Smith: It will be agreed that Col. Knapp will testify if he is able, and if not, then it will be the same as in the West Texas and Texas Transit cases.

Mr. Phinney: If protestants want to stand on the testimony that has been given by Col. Knapp previously as in other cases, then we can eliminate an argument with counsel. The Commission has a right to consider all of the evidence in other cases concerning the condition of the highways, it is agreeable so far as we are concerned to have that done in this case, and my agreement is to the other witnesses and is only to the citizen witnesses which testified as to the highways over which we will operate. In that connection, we offer into the record recommendations of County Judge of Ellis County, and W. S. Howard of Precinct #2, and M. C. Giles, Commissioner Precinct #3,

Tom J. Ball, District Judge, Archie D. Gray, District Attorney, W. C. Stephenson, Commissioner of Precinct #4; in which they state they have no objection for Mr. McDonald's application to be granted. I would like also to introduce the recommendation of the Mayor of Waxahachie as to his attitude as of May 14th, on this application. I have [fol. 36] some other recommendations here, one is from the Chamber of Commerce, and Retail Merchant's Association, and which I think can not properly be introduced except as correspondence. I would like to have them marked.

Mr. Smith: Col. Knapp's testimony will be the same as in the Wald and Beard cases, but there are some minor changes in the highways—for instance Waco to Hillsboro the highway has been opened there, and the testimony he gave should cover that road, and did cover it at the time it was given, but it will be given as improved in the testimony if it reflects the exact condition. He would give the testimony to cover the changes that have been made in the road if he is able to give this testimony. We want it as presented in the West Texas and Texas Transit Co. and will ask that it be as shown in those case-, and as in the Wald and Beard cases and be brought down to the most recent date possible.

Mr. Marshall: It is my idea of the law that the Commission is authorized to find out from any source the present condition. All right, let's have the testimony.

Examination of the witness A. E. McDonald, by Mr. Phinney, testimony as follows:

Q. You are A. E. McDonald?
A. Yes, A. E. McDonald.
Q. You live where?
A. Waxahachie, Texas.
[fol. 37] Q. Have you filed an application with the Railroad Commission for permit to operate as motor carrier for hire?
A. Yes, sir.
Q. What kind of application have you filed?
A. Interstate common carrier.
Q. Any body else interested in this application or your operation?
A. No, sir.
Q. You own it individually?

A. Yes, sir.

Q. The financial statement which you have filed here reflects the true condition of your finances?

A. Yes, sir.

Q. And of your assets and liabilities?

A. Yes, sir.

Q. The description of your equipment which you desire to operate—this shows you to have made application to operate three trucks, what are these trucks?

A. Two of them are ton and a half Chevrolets and the other ton and a half G. M. C.

Q. Trucks and semi trailers?

A. Yes, sir.

Q. Any of this equipment with air brakes?

—. ——.

[fol. 38] Q. The description you have set forth here as to the height, weight and length is correct as set forth in your application?

A. Yes, sir.

Q. You have made application for common carrier interstate certificate, Mr. McDonald, what do you intend to haul?

A. What I haul—interstate commerce, any commodities.

Q. What is your idea of interstate commerce, what do you mean by that?

A. Now, Mr. Phinney, interstate commerce consists of any commodities that have moved from one state to another, for instance into Texas from another state, and out of Texas to another state.

Q. Now, under this application do you desire to handle what is commonly referred to as ship side freight?

A. Yes, sir, that is when it is interstate freight.

Q. You desire to pick it up at the dock at Houston or Galveston and bring to points you set forth in your application?

A. Yes, sir.

Q. Outside of that will you transport any other commodities?

A. Under my application I would not be allowed to.

Q. Your application shows that you desire to operate over Highway No. 6 from Waxahachie to points in Oklahoma via Ft. Worth and Gainesville, when is the last time [fol. 39] you went over that highway?

A. It has been 30 days.

Q. What was the condition of that highway?

A. It is fair all the way up to the Oklahoma line, and the Oklahoma road is very good.

Q. Did you have any difficufty getting over that highway?

A. No.

Q. Experience any difficulty caused by traffic?

A. No.

Q. Is that highway in good condition?

A. Yes.

Q. From Waxahachie to Ennis what is the condition of that highway?

A. There is a distance of about 12 miles—and 8 miles of that is new concrete road, just opened, 18 feet wide and the other 4 is black top asphalt road and is smooth—it is just as smooth as the concrete.

Q. Do you have any difficulty in getting over that highway?

A. No, sir.

Q. Is the traffic using that highway heavy or light?

A. Very light.

Q. Now, when was the last time you were over it?

A. Last week.

Q. From your experience in the use of the highways would [fol. 40] you say that your operation would interfere with the public using that highway?

A. No, sir.

Q. Now, from Ennis down to Houston over Fed. No. 75 when was the last time you were over that?

A. Last Tuesday night.

Q. Generally, what is the condition of that highway?

A. You mean as to the road bed?

Q. The construction.

A. It is fine, A No. 1, with the exception of around Conroe, there is a little stretch down there that is not so good.

Q. Did you experience any difficulty due to traffic in getting over that highway?

A. Not while making that trip, we made a count of the traffic on the highway and we left Ennis at 12 o'clock at night and arrived in Houston around 6:30 the next morning, and we passed 57 vehicles coming and meeting us.

Q. That includes trucks and automobiles and wagons and that took nothing going in the opposite direction?

A. Yes, sir, everything.

Q. I notice in the application that you have asked for an alternate route from Huntsville to Navasota and then to

Houston over Highway 6, is it agreeable to you, if the Commission finds that Highway 75 between Houston and Conroe is so congested that any further use would inter-
[fol. 41] fere with the public use, would it be your intention to ask that they grant this alternate route, would that be agreeable with you then to operate from Houston to Navasota and then to Huntsville and on up 75?

A. At any time that Highway 75 is congested, I would.

Q. You ask the Commission to consider that as an alternative route at this time?

A. Yes, sir.

Q. Now, then, from Waco to Waxahachie, Mr. McDonald, what is the condition of that highway?

A. Good.

Q. Have you been over it recently, did you have any difficulty on that highway with reference to traffic?

A. None whatever.

Q. Did you have any trouble in passing vehicles on that highway?

A. Never did have any difficulty.

Q. What is the condition of Highway 6 from Waco to Navasota?

A. It is good.

Q. Have any trouble getting over that road?

A. No.

Q. It is a flat top road?

A. Yes, black top, and smooth.

Q. What would you say the condition of that highway is?

A. Fair.

[fol. 42] Q. Have you ever experienced any difficulty in getting over any of these highways, in any of the highways you have applied for?

A. No, sir.

Q. What is the condition of Highway 6 from Navasota to Houston?

A. Concrete slab.

Q. Is it good or bad?

A. It is A No. 1.

Q. Now, from Waco to San Antonio, what is the condition of that highway?

A. Well, that highway is under construction, we have a splendid road to near Temple, it is good concrete slab to near Temple, and then it is under construction and it will

probably be opened soon, and around San Marcos it is under construction there.

Q. And from San Antonio to McAllen what is the condition of that highway?

A. Perfect.

Q. Are you in the produce business in Waxahachie?

A. Yes, sir.

Q. Have you any occasion to go to the Valley to secure produce?

A. Yes, sir, I get loads of merchandise there during season.

[fol. 43] Q. And the merchandise you desire to haul back is only that merchandise you would use in your business, and would not be operating intra-state for hire?

A. No, but we have generally interstate shipments moving down there, and after we have unloaded the merchandise there we bring back produce, and thereby lowering the cost, and the savings will bring a less price that will be passed on to the ultimate consumer, the public.

Q. And it might be a shipment from points in Oklahoma you would carry to the Valley?

A. Yes, sir, or a car load distributed out of Dallas or Ft. Worth and destined to the Valley.

Q. Now, how frequently do you have your equipment inspected; concerning the mechanical devices of it?

A. I have my own garage and my own mechanic, and each trip of the truck that has been any distance, the truck is checked before it goes out and put in shape.

Q. From your experience as an operator in the past, do you think that your trucks, as equipped with air brakes, are more safe vehicles on the highway than one that is not?

A. Yes, I consider that they are considerably safer, and would recommend to the Railroad Commission or the Legislature that every motor vehicle be equipped with air brakes and just as quickly as it is possible, and I can get to it I am [fol. 44] going to equip my other equipment—all of mine—with brakes, as I consider it safer.

Q. Are you familiar with the laws of Texas concerning the number of hours the driver can operate?

A. I think so.

Q. You understand they are supposed to get 8 hours of sleep after they have driven 14 hours?

A. Well, so far I have never had any of my drivers work over 8 or 10 hours, and then they are off for 10 or 12 hours, and my understanding is that no driver can stay under the steering wheel or any where about the truck on duty for over 14 hours and then he must get away for 8 hours.

Q. And you do not mean by that sleeping in the cab or about the truck?

A. No, sir, I would consider that if he is on the truck he would be on duty.

Q. And if the Commission saw fit to grant your application you would continue to abide by all of the rules and regulations and laws of this state of Texas concerning the motor trucks operating over the highways?

A. Yes, sir.

Mr. Smith: How have you been operating?

A. Under an injunction secured from Judge Robertson in Waxahachie.

[fol. 45] Q. Have you been operating for Gillette?

A. No, not this year, but before I secured my injunction I was operating under their papers.

Q. And you operated under their injunction, and paid them part of the revenue from the operation?

A. No, sir, I paid so much for the privilege.

Q. You paid them 20 per cent?

A. I think that is my private business, Mr. Smith, it was under Mr. Gillette's operation.

Q. What kind of arrangement have you been operating under with the injunction, who have you been hauling for?

A. Everybody that had interstate freight on the highways that the injunction set out.

Q. Have any freight for the other concern—under your arrangement?

A. Sometimes.

Q. And you have been paying them commission?

A. No, sir.

Q. Then how did you get it?

A. Through friendship and service—service is the best way, Mr. Smith.

Q. What business are you engaged in?

A. Other than the truck line?

Q. Yes, sir.

A. As I stated, a while ago, I am in the wholesale fruit [fol. 46] and vegetable business.

Q. And the operation of these trucks will be, if granted, operated to supplement that business and in conjunction with it?

A. That is right.

Q. In conjunction with it?

A. Yes.

Q. And part of the time you will be handling your own fruit or produce and part of the time for hier?

A. That is correct.

Q. Now, how about the highways, you described some of them as fair, and some perfect, and some A No. 1, and by fair you mean that fair is not as good as those you described as A1, and perfect is the best class of highways?

A. Yes, sir.

Q. And perfect is from San Antonio to McAllen, how would you go from San Antonio to McAllen?

A. You go down Highway 80, I believe, you go down to Alice and there are various ways you can go from there, I move lots of stuff out of there, from the vicinity of Edinburg down in the Valley.

Q. And that perfect highway you found down there is where you go down to Alice and from there what way do you go?

A. I do not know the number of that highway, Mr. Smith, but south there to Edinburg—it is a direct line about 107 miles almost as an arrow flies, the asphalt road is smooth and almost as smooth as this floor.

[fol. 47] Q. How wide is it?

A. The pavement is 18 feet.

Q. Is the center higher than the edges?

A. Very little.

Q. Is it smooth and regular?

A. Yes, sir, from Alice on down it is, it is a good highway.

Q. And from Alice on up what about it?

A. There is some place up there on the road that is under construction, about Three Rivers, and most of that is concrete, and then you run into some asphalt.

Q. And you go through Kingsville?

A. No, sir.

Q. You do not go up there?

A. No. Sometimes we go by Kingsville in going to Houston.

Q. You do not go to Houston—I am talking about the San Antonio road. Do you go through Falfurrias from San Antonio?

A. Yes, sir, that is down below Alice.

Q. Is Kingsville between Alice and Edinburg?

A. No, sir.

Q. It is your testimony that that highway is 18 feet w an asphalt road that is fairly smooth?

A. Yes, sir.

Q. And that is your perfect highway?

A. Yes, that is all right.

[fol. 48] Q. Do you know how long that asphalt road been built?

A. No.

Q. Do you know if it is an old one or a new one?

A. No, sir, it would not make any difference as long a is in good condition at present.

Q. You testify that this road from Dallas to Denton then Gainesville as being a good highway, I will ask yo the highway leading out of Dallas County practically all way to Denton is about 14 feet asphalt road, higher in center and lower at the edges and rough?

A. It is not either an A1 or extra good road.

Q. That would be the highway from Denton on ove Gainesville?

A. It is both highways, there and from Denton back Dallas.

Q. What about from Gainesville on to the river, wha that a dirt road?

A. It is good, black top.

Q. You were not down here when these folks testi about that road?

A. No, sir, it does not make any difference, it is black I know what it is.

Q. You said that the highway from Waco to San Anto was perfect into Temple, was new construction, concrete

A. Yes.

[fol. 49] Q. And from Temple on down to San Marco fair?

A. The most of that road is asphalt road, and the asp is what I have termed as a fair road.

Q. Don't you know that for just a little beyond the t of Jarrell, there is about 6 miles of concrete 18 feet, and balance of that road is from 14 to 16 foot and is not a smo place in it from Jarrell to San Marcos except that 6 miles that true?

A. No, sir. That is not.

Q. Now, you made a trip down to Houston, you left Ennis at 12 at night?

A. Yes, sir.

Q. When did you get to Houston?

A. Next morning.

Q. And met 57 vehicles?

A. Yes.

Q. How long did it take you to drive down there?

A. From 8 to 8½ hours from Wa chachie.

Q. Did it take you that long to drive down there?

A. We were on a truck.

Q. How do you account for the fact that recently on a count that there were 6900 vehicles daily operating through the town of Huntsville on that highway?

Mr. Phinney: We object to that statement without estab-
[fol. 50] lishing as to where it came from.

Mr. Smith: Bob Andress introduced the statement in a recent case, that 6900 or 5900 vehicles daily operated there, and it was in his testimony and it was admitted into the record in the Wald case—6900 or 5900 vehicles daily.

Mr. Phinney: I am going to object to that as the Commission has evidence before them, and they can properly pass on the condition of the highway, and I think that is irrelative in this case.

Mr. Marshall: Mr. McDonald would not know what it was in the first place, you should cross examine him on what he knows and what he has testified about, and he just testified as to what he saw and not what another saw or what the other's count was.

A. I would be glad to carry you down with me some night and verify my statement, I would like to show to you that it is as I stated. The following night we only passed 102 trucks, coming back.

Mr. Smith: When was it you made that trip?

A. Last Tuesday night, tonight, a week ago.

Q. As a matter of fact there has been a lot of trucking out of Houston, but not much recently on account of the strike at the dock?

A. There has nothing been unloaded from the docks, but considerable stuff moving from the warehouses.

[fol. 51] Q. The trucking activities are not comparable at all with when they are unloading boats at Houston, and when they are not as this last week?

A. I have made lots of trips to Houston and did not notice a lot of difference.

Q. Do you only propose to operate just freight from the docks?

A. Interstate freight, if I can get it.

Q. Are you going to pick it up from the docks or warehouses?

A. The commodities that have gone into the warehouses are not interstate commerce.

Q. How long does it have to lay there before it would commence to be intra-state commerce?

A. I consider it intra-state the minute it hits the warehouse.

Q. You would not mind being limited to picking up freight at the docks?

A. That is what I am asking for.

Q. Is that in your opinion—is that what you consider from your experience as interstate freight?

Mr. Marshall: He stated that on Mr. Phinney's examination.

Mr. Phinney: We will be in favor of that being placed in the permit.

[fol. 52] Mr. Smith: Now, this financial statement—where is your homestead?

A. It is in Waxahachie.

Q. The farm, is that your homestead?

A. No, sir, that is in Limestone County.

Q. You have not listed the homestead at all on the financial statement?

A. I do not recall doing that.

Mr. Marshall: You are the first one that I have ever known that did not do that. I am glad to know that.

Mr. Smith: This farm, then, is other than the homestead, and the homestead is in Waxahachie?

A. Yes, sir, that is right.

Witness dismissed.

Mr. Marshall: Now, your case, Mr. Smith.

Mr. Smith: The statement in the record is our case. There is plenty of testimony in the other records and we will stand on that.

Case is submitted.

[fols. 53-54] STATE OF TEXAS,
County of Travis:

I, Erin Jones Couch, Reporter for the Railroad Commission of Texas, do hereby certify that the above and foregoing 22 pages constitute a true and correct record, to the best of my skill and ability, of the proceedings taken in Docket No. 1739, on May 15, 1934.

Witness my hand, this the 24th day of May, 1934.

Erin Jones Couch, Reporter, Railroad Commission of Texas.

[fol. 55] EXHIBIT "F"

IN THE DISTRICT COURT OF TRAVIS COUNTY, TEXAS, 98TH JUDICIAL DISTRICT

No. 54134

A. E. McDONALD

vs.

RAILROAD COMMISSION OF TEXAS et al.

To the Honorable Court Aforesaid:

Now comes A. E. McDonald, plaintiff in the above styled and numbered cause, and complains of Lon A. Smith as chairman, and C. V. Terrell, and Earnest O. Thompson as members of the Railroad Commission of Texas, and as the grounds for his complaint would respectfully show as follows unto the court, that:

I

The plaintiff is a resident of Waxahachie, Ellis County, Texas, and the defendants are each the duly elected, qualified and acting members of the Railroad Commission of Texas, and have their temporary residences in Austin, Travis County, Texas, where service of citation may be had.

II

The plaintiff, subsequent to May 15, A. D., 1934, filed with the Railroad Commission of Texas, defendants herein, an application for a certificate authorizing the operation of a common carrier, motor carrier service, interstate, from

Waxahachie, Texas to points in the state of Oklahoma, via Dallas and Denison, Texas, over State Highway No. 34, thence to Denton over State Highway No. 10, and to the Oklahoma State line via Gainesville over State Highway No. 40, and from Waxahachie to Galveston, Texas and return over Highway No. 34 to Ennis, and to Houston and Galveston over Federal Highway No. 75; and from Waxahachie to San Antonio, Texas and to McAllen, Texas over State Highways Nos. 6, 2, and 66, and from Waxahachie, Texas to Galveston, Texas over State Highways Nos. 6 and 2. In accordance with the terms of Section 11 of Article 911-B of the Motor Carrier Laws of the State of Texas, the Commission set the application of the plaintiff down for hearing at Austin, Texas on May 15, A. D., 1934 at ten o'clock A. M. At that time the application of the plaintiff was called and the hearing conducted by Honorable Mark Marshall, the Director of Motor Transportation of the Railroad Commission of Texas, defendants herein, and at that hearing, the plaintiff, appearing in person and by his attorney, caused the necessary testimony and evidence shown [fol. 56] which the Commission could intelligently act upon the application of said plaintiff. In spite of the fact that the Railroad Commission of Texas mailed ten days, exclusive of the date of mailing, before May 15, 1934, written notices addressed to the owners of existing transportation facilities serving the territory the plaintiff sought to serve, and to the Highway Commission of the State of Texas, the County Judges of the Counties, and to the Mayors of the incorporated cities and towns through which the plaintiff sought to operate, there was no one present at the hearing to protest the issuance of this certificate by the Railroad Commission of Texas, defendants herein. There was introduced at that time, recommendations from the County Judge, the District Judge, the Mayor of Waxahachie, and other leading citizens of Ellis County, to the effect that they desired to go on record as recommending to the Commission that the application of the plaintiff be granted. The Commission had this evidence, together with the testimony of the applicant, before it when it passed upon the merits of the plaintiff's application.

II

On July 14, A. D., 1934, or approximately 61 days thereafter, the plaintiff received a copy of an order entered by

the Railroad Commission of Texas denying his application. A copy of this order is attached hereto and is hereafter referred to as Exhibit "A", and is made a part of this petition for all purposes. The said order of the Railroad Commission, denying the plaintiff's application, was a mimeographed copy of what seemed to be an order that took into consideration testimony and evidence adduced at other hearings at which the plaintiff had no opportunity to appear. The order further recited "probably more than a hundred county judges, county commissioners, county attorneys, mayors, members of city councils, managers of chambers of commerce, school superintendents, newspaper editors, merchants and other citizens have testified at these hearings against the granting of additional truck permits over highways in their cities and counties." Plaintiff made application to operate three trucks in the transportation of interstate commodities only when not engaged in the transportation of his own commodities, the plaintiff being engaged in the wholesale cold-storage business in Waxahachie, Ellis County, Texas. Plaintiff would respectfully show that, subsequent to the hearing of the Wald application, the Com-
[fol. 57] mission entered its order finding that the highways over which applicant Wald was seeking to operate were in such state of repair as would withstand the traffic that applicant sought to place upon the highways and that the use that applicant Wald sought to make of the Highways of Texas would not unreasonably interfere with the use of the traveling public using these highways as applied for, for ordinary purposes.

III

Plaintiff would respectfully show that the order (Exhibit "A") as complained of herein, is unjust and unreasonable to him for the reason that there was no evidence adduced on the hearing of the application of the plaintiff before the Commission to support its order denying this certificate. At the hearing there was no one present to protest the granting of this application, and instead of having objections from county commissioners, county judges, etc., the Commission had before it recommendations requesting the Commission to grant the application of the said plaintiff.

IV

Plaintiff would further show that the order (Exhibit "A") is so arbitrary as to be beyond the exercises of reason-

able judgment and discretion vested in the Railroad Commission of Texas by the Motor Carrier Act, and that because it is beyond the exercises of reasonable judgment and discretion, the order denying the application is unjust and unreasonable to the plaintiff for the reason that if the Commission considered testimony adduced at other hearings when applicant Wald was before the Commission, then they found upon the evidence adduced at that hearing that the highways would withstand the additional traffic sought to be placed thereon, and that the applicant's trucks would not unreasonably interfere with the use the public makes of the highways for ordinary purposes.

V

Plaintiff would further show that the order denying his application for a Common Carrier, Motor Carrier Interstate Certificate is unjust and unreasonable for the reason that it was not shown by any evidence whatsoever that the highways over which applicant sought to operate were of narrow paved surfaces, and that they had become rough and uneven from traffic, or that they were used to their maximum [fol. 58] capacity by heavy traffic in moving the cotton crop. There was no evidence whatsoever adduced at the hearing of the plaintiff that rebutted the testimony of the applicant to the effect that the highways were paved, all-weather highways, and that they were in good condition, and further, that there was no evidence whatsoever of any cotton crop moved over the highways over which the applicant sought to operate. The Commission's order in denying the plaintiff's application is arbitrary, unjust and unreasonable to the plaintiff for the further reason that the Railroad Commission of Texas has denied all applications for permits to transport cotton for hire over the highways of this State, that they abused their discretionary power and authority when they refused and failed to take judicial notice of their own orders and acts.

VI

Plaintiff would further show that the order complained of is unjust and unreasonable to the plaintiff for the reason that there was no evidence whatsoever adduced at the hearing on his application for Common Carrier Certificate to the effect that the highways would not withstand the traffic plain-

tiff sought to place thereon, but that the Commission, without regard to the records of the Highway Department, and without regard to the testimony of the plaintiff and the recommendations from officials and leading citizens of Waxahachie and Ellis County, Texas to the effect that this application should be granted, arbitrarily denied the right of the plaintiff to operate, thereby rendering this order unjust and unreasonable to him.

VII

Plaintiff would respectfully show that at times he is transporting perishable commodities that will be destroyed if he is prevented from transporting them, that he is being threatened with arrest and criminal prosecution in the event he attempts to transport commodities for hire over the highways of this State, and, unless the Court grants him its gracious temporary writ of injunction, he will suffer irreparable loss, and that he has no adequate remedy at law.

Wherefore, Premises Considered, plaintiff prays that citations issue to the defendants citing them to appear and answer to this complaint, and that they appear and show [fol. 59] cause why a permanent injunction against them, enjoining and restraining them permanently, their agents, representatives, servants, and employees from molesting and in any wise interfering with the plaintiff's operation, and that this honorable court grant the Plaintiff a temporary injunction enjoining and restraining the Defendants, their agents, servants, and employees from molesting or in in any time interfering with the Plaintiffs operation of three trucks as applied for, and that upon hearing, the Court grant him its gracious writ of injunction permanently and perpetually enjoining the defendants, their agents, representatives, servants, and employees from molesting or in any wise interfering with the plaintiff's operation of an Interstate Common Carrier, Motor Carrier service over the highways he applied for, and that the order of the Railroad Commission of Texas, defendants herein, denying the plaintiff's right to operate, be set aside and held for naught, and for all other relief both general and special in law and in equity to which the plaintiff is justly entitled and forever prays.

Carl L. Phinney, Attorney for Plaintiff.

STATE OF TEXAS,
County of Travis:

Before me, the undersigned authority, on this day personally appeared Carl L. Phinney, attorney of record for plaintiff, and who, after by me being duly sworn, states that the allegations in the foregoing petition are to his best knowledge and belief true and correct.

Carl L. Phinney.

Subscribed and sworn to before me this the 24th day of July, A. D., 1934. Jas. T. Johnson, Notary Public, Travis County, Texas. (Seal.)

[fol. 60] In Chambers This the 24th Day of July, A. D. 1934.

On this day, there being presented to me the above petition, an application for a Show Cause Order requiring the defendants to appear and show cause why a permanent injunction should not be granted, and it appearing from the allegations contained in the plaintiff's petition that his application for a Show Cause hearing should be granted, it is therefore accordingly ordered that the Clerk of this Court issue forthwith, a Show Cause Order requiring the defendants to appear on the 27th day of July, A. D., 1934, at ten o'clock A. M., to show cause why a permanent injunction should not be granted against them.

J. D. Moore, Judge Presiding.

[fol. 61] "Exhibit A"

Order Denying Interstate Common Carrier Certificate

Railroad Commission of Texas

Motor Transportation Division

Motor Carrier Docket No. 1739

Application of A. E. McDONALD, Waxahachie, Texas, for a Certificate Authorizing the Operation of a Common Carrier Motor Carrier Service Interstate from Waxahachie to Points in Oklahoma via Dallas and Denison Over State Highway No. 6 and via Fort Worth Over State Highway No. 34 Thence to Denton Over State Highway No. 10 and Thence to Oklahoma State Line via Gainesville Over State Highway No. 40 From Waxahachie to Galveston

Over State Highway No. 34 to Ennis Thence to Houston and Galveston Over Federal Highway No. 75; from Waxahachie to Hillsboro Over State Highway No. 6 Thence to San Antonio Over State Highway No. 2 and Thence to McAllen Over State Highway No. 66; from Waxahachie to Galveston Over State Highway No. 6 and 2 to Waco Thence to Galveston via Houston Over State Highway No. 6.

Austin, Texas, July 14, 1934.

Opinion & Order

By the Commission:

On May 15, 1934, the above styled application was submitted to the consideration of the Railroad Commission in its Hearing Room in the Capitol in Austin, Texas, pursuant to notices having been issued and filed herein to all interested parties as well as the public in general according to law.

On 14th day of July 1934, the Railroad Commission took up for consideration the above styled application and after duly considering the facts, the law and its own rules and regulations reaches the following conclusion to-wit:

[fol. 62] The Commission has had before it during the last few months a number of applications of the same nature as this, in which the applicants have asked for the privilege of using many of the principal highways of the state in the same manner as this applicant. In order for the Commission to determine whether, in its opinion, certain highways of this state are carrying all of the truck traffic that can be safely entrusted on said highways without unreasonably interfering with the use thereof by the general public, the Commission has held a number of hearings in various portions of the state in order that local officials, who are familiar with the condition of the highways in their respective localities and the amount of traffic that such highways are forced to carry, might be able to testify under oath concerning the same. Probably more than a hundred County Judges, County Commissioners, County Attorneys, Mayors, Members of the City Councils, Managers of Chambers of Commerce, School Superintendents, newspaper editors, merchants and other citizens have testified at these hearings against the granting of addi-

tional truck permits over highways through their cities and counties.

Many of these witnesses whose characters and reputations were not questioned and whose interests were apparently unselfish, have testified that owing to the fact that heavy truck traffic, and especially at night, makes the highways leading into the larger centers of population so dangerous that such citizens are afraid to use the highways as much as they otherwise would. Some witnesses testified that if business called them to Houston, Dallas, or other large cities and they were unable to conclude their business before dark they spent the night in such cities rather than risk themselves upon the highways after night. Many of these officials and citizen witnesses testified that they themselves and many of the citizens of their communities were deprived of the use of some of the principal highways by reason of heavy traffic over said highways leading to aforesaid, centers of population, and that they would use the highways more, especially at night, were it not for the fact that truck traffic thereon caused such hazardous conditions that made them fear for their lives and limbs.

The evidence of these hearings showed conclusively that seasonable movements cause wide fluctuation of traffic. When crops proceed to market, truck traffic, especially, is greatly increased. Such crops, of course, vary in different sections of the state but when being marketed they naturally cause business in all lines to expand during the movement. This state often produces five or six million bales of cotton annually and the bulk of this movement occurs during the period from September through the following four months. Dallas is one of the largest inland cotton concentration points in the world, while Houston and Galveston are two of the principal cotton shipping ports. Hundreds of thousands of bales of cotton have, in the past, moved by truck over the highways between Dallas and Houston while still many more bales passed through the State of Texas from points in Oklahoma and Arkansas destined for these port cities. It is true that business conditions over the country have slowed down truck and other traffic to some extent but the Commission has received a mandate from the Legislature to not only take into consideration present burdens but also future burdens which the state highways will be called upon to assume. Certificates or permits granted by the Commission are more or less of a permanent nature so

long as the holders thereof comply with the law and with the rules and regulations of the Commission; therefore, to grant a certificate or permit during a light season or during a temporary business depression would result in adding traffic burdens to highways during busy seasons or when business conditions again return to normalcy. It is only natural to assume that the population of Texas will continue to increase and that with such increased population the highways will be called upon to assume more and more truck and motor traffic of various kinds. The fact that truck [fol. 63] traffic uses the highways to the maximum at night only adds to their hazards and these hazards are magnified in the case of those citizens whose duties prevent them from enjoying the highways for recreation purposes during daylight hours and who, perhaps, are not expert drivers at night. The large toll of deaths and injuries on the most highly improved highways, in which trucks are involved, leads the Commission to place even more credence to the evidence gathered at the hearings for the purpose of ascertaining the condition of such highways, and is cumulative of the testimony of the many disinterested citizen witnesses and officials, that these highways are already carrying as much or more truck traffic than is reasonably safe for the general public.

Portions of many of the principal highways contain narrow paving surfaces that become rough and uneven from traffic and whose dirt shoulders present unusual hazards, especially during fall, winter and spring, which are rainy seasons, and when they are used to their maximum by heavy traffic in moving the cotton crop. The evidence conclusively showed that it was impossible for an ordinary passenger car and a truck of the width permitted under the general laws of this state to pass each other upon the roads of this character without one or both of such vehicles being compelled to traverse the dirt shoulder. It was further shown that trucks, by reason of their weight, were more jealous of holding the center of the road during wet weather than at other times as they were likely to become more unmanageable when turning out upon the wet dirt shoulders and this naturally adds to the hazards of the citizens using the highways for pleasure or in the ordinary pursuit of their business.

While the Commission has not attempted to assume jurisdiction over truck operations through incorporated cities

and towns, the evidence has shown that usually the principal and often the only improved street is the one over which practically all of the through truck traffic flows. Other unimproved streets in many of the smaller cities and towns could not possibly carry this heavy traffic without being practically destroyed. These cities and town- are financially unable to properly police traffic and it would prove ruinous for them to be called upon to assume the burden of reconstructing their streets if the latter are destroyed by traffic. In many instances schools, churches, business houses and gins are located alongside of or closely adjacent to the state highway and it is necessary for citizens and children to use these highways daily, and they should not be called upon to risk their lives and limbs by having placed upon these highways such additional traffic as would unreasonably interfere with their use by such citizens and children.

There are at this time some five hundred trucks authorized to be operated out of Dallas as common carriers and one hundred and twenty-two trucks as contract carriers, while there are some four hundred common carriers operating out of Houston and fifty or sixty contract carrier trucks. In addition there are several hundred special commodity trucks operating out of Dallas and Houston, engaged in the transportation of various commodities but principally that of oil field equipment. In addition to these motor carrier trucks, the Highway Department records show that more than 120,000 trucks, 19,000 trailers and 883,000 passenger cars had been registered by that Department up to about the middle of May of this year.

[fol. 64] It is Therefore, Ordered, Adjudged and Decreed by the Railroad Commission of Texas, that the application of A. E. McDonald, Waxahachie, Texas, for a certificate authorizing the operation of a Common Carrier Motor Carrier Service Interstate from Waxahachie to point- in Oklahoma via Dallas and Denison over State Highway No. 6; and via Fort Worth over State Highway No. 34, thence to Denton over State Highway No. 10, and thence to Oklahoma State Line via Gainesville over State Highway No. 40; from Waxahachie to Galveston over State Highway No. 34 to Ennis thence to Houston and Galveston over Federal Highway No. 75; From Waxahachie to Hillsboro over State Highway No. 6, thence to San Antonio over State Highway No. 2 and thence to McAllen over State Highway No. 66;

From Waxahachie to Galveston over State Highway No. 6 and 2; Waco thence to Galveston via Houston over State Highway No. 6, be and the same is hereby denied. This order subject to the further orders of the Railroad Commission.

Railroad Commission of Texas, —— ——, Chairman; C. V. Terrell, Ernest O. Thompson, Commissioners.

Attest: C. R. McNamee, Acting Secretary.

VBG:s.

(Endorsed:) No. 54134. A. E. McDonald vs. Railroad Commission of Texas, et al., Plaintiff's original petition. Filed in the 98th District Court of Travis County, Texas, July 24, 1934. Geo. H. Templin, District Clerk, by Jas. T. Johnson, Deputy.

[fol. 65] THE STATE OF TEXAS,
County of Travis:

I, Geo. H. Templin, Clerk of the District Courts within and for the State and County aforesaid, do hereby certify that the within and foregoing is a true and correct copy of Plaintiff's Original Petition in Cause No. 54134, wherein A. E. McDonald is Plaintiff and Railroad Commission of Texas, et al. are Defendants, as the same appears on file and of record in this office.

Given under my hand and seal of office, at Austin, Texas, this the 21st day of January, 1936.

Geo. H. Templin, Clerk, District Courts, Travis County, Texas, by Geo. W. Bickler, Deputy. (Seal.)

[fol. 66] EXHIBIT "G"

IN THE 98TH DISTRICT COURT OF TRAVIS COUNTY, TEXAS

No. 54,134

A. E. McDONALD

vs.

RAILROAD COMMISSION OF TEXAS et al.

Now comes the defendant Railroad Commission of Texas, composed of Lon A. Smith, as Chairman, and C. V. Ter-

rell and Ernest O. Thompson as members thereof, and for answer to the plaintiff's original petition herein filed says:

I

Defendant demurs generally to the plaintiff's petition and says the same is insufficient in law to require it to answer and should be dismissed, and of this defendant prays judgment of the court.

II

Denying each and every allegation of the plaintiff's petition contained and demanding strict proof thereof, defendant puts itself upon the country.

III

And for further answer herein, if such be necessary, but without waiving the foregoing exceptions, either general or special, and still insisting upon the same, defendant says:

1. Defendant specifically denies that the order complained of by the plaintiff is in any way unjust or unreasonable, [fol. 67] and also specifically denies that its order is not supported by the evidence introduced before the defendant at the hearing upon plaintiff's application for a certificate to operate in interstate commerce, but asserts that the order is in all things just and reasonable and supported by the evidence.

Wherefore, defendant prays that the injunction sought, together with all other relief sought, be in all things denied, and that it be discharged with its costs.

James V. Allred, Attorney General of Texas; T. S. Christopher, Assistant Attorney General, Attorneys for the Defendant, Railroad Commission of Texas.

(Endorsed:) No. 54,134. In the 98th District Court of Travis County, Texas. A. E. McDonald vs. Railroad Commission of Texas et al. Defendant's Original Answer. Filed in the 98th District Court of Travis County, Texas, November 14, 1934. Geo. H. Templin, District Clerk, by Jas. T. Johnson, Deputy.

[fol. 68] THE STATE OF TEXAS,
County of Travis:

I, Geo. H. Templin, Clerk of the District Court within and for the State and County aforesaid, do hereby certify that the within and foregoing is a true and correct copy of Defendant's Original Answer in Cause No. 54,134, wherein A. E. McDonald is Plaintiff, and Railroad Commission of Texas et al. are Defendants, as the same appears on file in this office.

Given under my hand and seal of office, at Austin, Texas, this the 21st day of January, 1936.

Geo. H. Templin, Clerk, District Courts, Travis County, Texas, by Geo. W. Bickler, Deputy. (Seal.)

[fol. 69] EXHIBIT "H"

IN DISTRICT COURT, TRAVIS COUNTY, TEXAS

November 14, 1935

IN THE DISTRICT COURT OF TRAVIS COUNTY, TEXAS, 98TH JUDICIAL DISTRICT.

No. 54134

A. E. McDONALD

vs.

RAILROAD COMMISSION OF TEXAS et al.

On this, the 14th day of November, A. D., 1934, came on to be heard the above styled and numbered cause, and came the plaintiff and defendants in person and by their attorneys and announced ready for trial, and the jury having been waived, all matters of fact, as well as of law, were submitted to the Court; and the Court, after hearing the pleadings, the evidence and the arguments of the counsel, is of the opinion that both the law and the facts are with the plaintiff and that the plaintiff should recover and have judgment for the relief as pleaded for in the petition.

It is, therefore, Ordered, Adjudged and Decreed that the plaintiff, A. E. McDonald, do have and recover from and of the defendants all of the relief as prayed for in its original petition, and that the temporary injunction, here-

tofore granted in this cause, shall be made permanent and perpetual and the said temporary injunction, as heretofore issued, is hereby in all things made permanent and perpetual, and the defendants, their agents, representatives, servants and employees are hereby now permanently and perpetually enjoined from arresting or in any manner causing to be arrested the plaintiff or any of its agents, representatives, servants or employees, from in any manner interfering with the plaintiff, its agents, representatives, servants and employees while operating a common carrier motor carrier service transporting commodities moving in interstate commerce over the following highways, to-wit: From Waxahachie, Texas to points in the state of Oklahoma via Dallas and Denison, Texas over State Highway No. 34 to Ennis, and over Federal Highway No. 75 from Ennis to Dallas, and over Highway No. 6 from Waxahachie to Dallas, and from Dallas to the Texas-Oklahoma State Line via [fol. 70] Sherman and Denison, Texas over Federal Highway No. 75, and from Dallas to the Texas-Oklahoma State Line via Gainesville over Federal Highway No. 77 and return to Waxahachie; from Waxahachie to Ennis, Texas over State Highway No. 24, and from Ennis to Houston and Galveston over Federal Highway No. 75 and return; and from Houston to San Antonio and return over State Highway No. 3; and from Waxahachie to San Antonio, Texas to McAllen, Texas over State Highways Nos. 6, 2, and 66 and return; and from Waxahachie, Texas to Waco, Texas to Galveston, Texas over State Highway No. 6 and No. 2 and return, and serving the cities and towns along such highways.

It is, therefore, Ordered, Adjudged and Decreed that the plaintiff, under the permanent injunction, shall be entitled to operate three (3) trucks to be in interstate commerce only. The plaintiff shall be entitled to transport commodities from one point of Texas to another point in Texas along the highways as hereinbefore set out provided the commodities so transported shall be moving in interstate commerce.

It is further Ordered, Adjudged and Decreed that the defendants, their agents, servants, representatives or employees are further permanently and perpetually enjoined from interfering with the plaintiff, his agents, servants, representatives or employees in the operation of the number of trucks, as hereinbefore set out, for failure to have displayed on the plaintiff's trucks the Railroad Commis-

sion's identification plates and tags. Provided, however, that if the Railroad Commission of Texas, defendant herein, shall hereinafter, in accordance with the terms of this judgment, issue a certificate of convenience and necessity authorizing the operation of a motor carrier service interstate in all respects as applied for, and shall permit the plaintiff to operate under the terms of the certificate, and shall issue to the plaintiff all necessary plates, identification tags and cards, that then and in that event this injunction may be dissolved or considered void and of no further force and effect. Provided, however, that the plaintiff herein [fol. 71] shall operate under this injunction subject to all other provisions of the law applicable to plaintiff save and except the requirement for a certificate of convenience and necessity and subject to all lawful orders, rules and regulations of the Railroad Commission, save and except the requirement for a certificate of convenience and necessity. That all costs of this suit be and they are hereby taxed against the plaintiff for which the officers of this Court may have their execution. To the Order, Judgment and Decree of the Court, the defendant then and there in open court excepted and gave notice of appeal to the Third Court of Appeals at Austin, Texas.

W. F. Robertson, Judge Presiding.

(Endorsed:) No. 54134. In the District Court of Travis County, Texas, 98th Judicial District. A. E. McDonald vs. Railroad Commission of Texas, et al. Judgment. Filed in the 98th District Court of Travis County, Texas, November 14, 1934. Geo. H. Templin, District Clerk, by Jas. T. Johnson, Deputy.

[fol. 72] The State of Texas,
County of Travis:

I, Geo. H. Templin, Clerk of the District Courts within and for the State and County aforesaid, do hereby certify that the within and foregoing is a true and correct copy of Judgment in Cause No. 54134, wherein A. E. McDonald, is Plaintiff and Railroad Commission of Texas, et al. are Defendants, as the same appears on file and of record in this office.

Given under my hand and seal of office, at Austin, Texas, this the 21st day of January, 1936.

Geo. H. Templin, Clerk, District Courts, Travis County, Texas, by Geo. W. Bickler, Deputy. (Seal.)

[fol. 73] EXHIBIT "I"

No. 8284

RAILROAD COMMISSION et al., Appellants,

vs.

A. E. McDONALD, Appellee

From District Court of Travis County

Appellee, McDonald, applied to the Railroad Commission for a motor carrier permit to operate trucks over several cardinal highways in Texas in hauling what he designated as interstate commerce, though his application shows that he contemplated carriage of freight almost entirely within the State. His application was heard by the Commission on May 15, 1934, and was by the Commission denied on July 14, 1934. The order of the Commission denying the permit found numerous facts as to the use of the highways generally by trucks, including several of the highways on which McDonald proposed to operate in and about designated cities, the injuries such operations would inflict upon portions of such highways, the dangers to the traveling public thereon occasioned by such operations, and refused the permit, obviously on the ground that, as to at least portions of the highway sought to be used such operation would place an undue burden upon the physical properties of the highways themselves, would endanger public safety, and would interfere with the use thereof by the public.

Appellee appealed from such order by filing suit in the District Court of Travis County to enjoin the Commission and its enforcement officers from interfering with his operations over the routes applied for, on the ground that the Commission's order was arbitrary, unjust and unreason-[fol. 74] able as to him and without evidence to support it. A temporary injunction was granted as prayed for and upon hearing was made permanent, from which judgment the Commission prosecutes this appeal.

Appellee's place of business was at Waxahachie, Texas. His application sought a permit to operate from there to Oklahoma through Dallas, Denton, Gainesville and Denison, over State Highways 34, 10 and 40; from Waxahachie to Galveston via Ennis over State Highway 34; thence over Federal Highway 75 through Corsicana, Huntsville and Hous-

ton, and to the same point over State Highways 6 and 2 to Waco, and Highway 6 from there to Houston via Bryan and Hempstead; from Waxahachie to McAllen over Highway 6 to Hillsboro, thence over Highway 2 to San Antonio, thence over Highway 66 to McAllen.

Trial was to the court without a jury. The original evidence introduced on the trial of this case was meagre; but by agreement of counsel, and with the approval of the trial court, there was introduced in evidence a transcript of the testimony heard by the Railroad Commission on McDonald's application, and that heard by the Commission on the application of Wald Transfer & Storage Company, on January 15-17, 1934, for a permit to operate trucks over and upon several of the same highways involved in McDonald's application, with the agreement that the facts therein shown should be considered by the trial court in this case; and further that in the hearing before the Commission, the evidence offered in the Wald application should be considered by the Commission in passing upon McDonald's application. There was also introduced in evidence the order of the Railroad Commission granting to Wald, on March 29, 1934, the permit applied for. It was also agreed that the Commission had reconsidered and reopened the Wald case, and that [fol. 75] same was still pending at the time of the trial hereof.

Upon application, the trial court filed findings of fact and conclusions of law. These findings are first attacked upon this appeal. The first finding of the trial court complained of is, "that there was present at the hearing (before the Railroad Commission) only the applicant, and that there was no testimony introduced protesting the granting of this certificate." This finding cannot be sustained. The statement of facts shows that counsel appeared before the Commission at the hearing on McDonald's application, made agreements with his counsel as to evidence the Commission should consider on that hearing, and as to material facts relating to same. Among other things, that the Commission should consider at that hearing the testimony offered at hearings before the Commission on applications made by Beard and by Wald Transfer & Storage Company to operate trucks over the same highways, the transcript of the evidence in the Wald hearing being brought up as an exhibit and a part of the record in the instant case. In the Wald

hearing several protestants appeared, the hearing lasted three days, and extensive evidence was introduced relating to the condition of the various highways, protests of various citizens against such permits, congested traffic conditions, dangers and inconvenience to the public using such highways caused by such truck operations, and damages to sections of such highways caused by truck operations. These matters all thus being made by agreement a part of the record in the instant case and it being agreed that the trial court should so consider them, it affirmatively appears that this finding by the trial court was erroneous.

[fol. 76] The trial court also found as a fact that such operation by appellee over such highways would not unreasonably interfere with the use thereof by the public; that such use by appellee would not put upon the highways themselves any present or future undue burden on the physical properties thereof, because appellee was already using same in conducting his private business; that the Commission did consider, in passing upon appellee's application, the testimony heard by it in the Wald case; and that it did grant Wald such permit.

While the testimony adduced in the Wald case was perhaps sufficient, if the order of the Railroad Commission be disregarded, to sustain an independent finding of the trial court of the facts recited as to burdens upon the highways and interference with the use thereof by the public, this is not the test to be applied in appeals from orders of the Commission entered after proper hearing and consideration. The test is, not what the court's independent judgment might be, but whether there was substantial evidence before the Commission to sustain its order. Regulation of the use of the public highways is not delegated by law to the courts, but is expressly delegated to the Commission, and the only pertinent inquiry in an appeal to the court is whether the Commission has legally exercised the power granted to it. The statutes (Art. 911a and 911b, Vernon's Ann. Stat.) as variously amended, prescribe at length and in detail the powers and duties of the Commission with respect to such regulation. So long as the Commission exercises such supervision reasonably and in conformity with the statute, their orders should be given a high degree of verity, and unless clearly illegal or arbitrary should not be stricken [fol. 77] down. Shupee v. Railroad Commission, 57 S. W. (2d), 295; aff. by Supreme Court in 73 S. W. (2d) 505, 123

Tex. 517; Texas Motor Coaches v. Railroad Commission, 59 S. W. (2d), 923; aff. by Supreme Court in 73 S. W. (2d), 511.

As a basis for, and as a part of, the Commission's order attacked in the instant case, and in compliance with Sec. 13, Chap. 277, Acts Reg. Ses. 42nd Leg., 1931, which requires the Commission, where an application is contested, to "file a concise written opinion setting forth the facts and grounds for its action," the Commission made and filed rather extensive findings. We quote excerpts therefrom, as follows:

"The Commission has had before it during the last few months a number of applications of the same nature as this, in which the applicants have asked for the privilege of using many of the principal highways of the State in the same manner as this applicant. In order for the Commission to determine whether, in its opinion, certain highways of this state are carrying all of the truck traffic that can be safely entrusted on said highways without unreasonably interfering with the use thereof by the general public, the Commission has held a number of hearings in various portions of the state in order that local officials, who are familiar with the condition of the highways in their respective localities and the amount of traffic that such highways are forced to carry, might be able to testify under oath concerning the same. Probably more than a hundred County Judges, County Commissioners, County Attorneys, Mayors, Members of the City Councils, Managers of Chambers of Commerce, School Superintendents, newspaper editors, merchants and other citizens have testified at these hearings against the granting of additional truck permits over highways through their cities and counties."

"Some witnesses testified that if business called them to Houston, Dallas, or other large cities and they were unable to conclude their business before dark they spent the night in such cities rather than risk themselves upon the highways after night. Many of these officials and citizens of their communities were deprived of the use of some of the principal highways by reason of the heavy traffic over said highways leading to aforesaid centers of population, and that they would use the highways more, especially at night, were it not for the fact that truck traffic thereon caused such hazardous conditions that made them fear for their lives and limbs."

[fol. 78] "Dallas is one of the largest inland cotton concentration points in the world, while Houston and Galveston are two of the principal cotton shipping ports. Hundreds of thousands of bales of cotton have, in the past, moved by truck over the highways between Dallas and Houston while still many more bales passed through the State of Texas from points in Oklahoma and Arkansas destined for these port cities."

"The fact that truck traffic uses the highways to the maximum at night only adds to their hazards and these hazards are magnified in the case of those citizens whose duties prevent them from enjoying the highways for recreation purposes during daylight hours and who, perhaps, are not expert drivers at night. The large toll of deaths and injuries on the most highly improved highways, in which trucks are involved, leads the Commission to place even more credence to the evidence gathered at the hearings for the purpose of ascertaining the condition of such highways, and is cumulative of the testimony of the many disinterested citizens, witnesses and officials, that these highways are already carrying as much or more truck traffic than is reasonably safe for the general public."

"The evidence conclusively showed that it was impossible for an ordinary passenger car and a truck of the width permitted under the general laws of this state to pass each other upon the roads of this character without one or both of such vehicles being compelled to traverse the dirt shoulder. It was further shown that trucks, by reason of their weight, were more jealous of holding the center of the road during wet weather than at other times as they were likely to become more unmanageable when turning out upon the wet dirt shoulders and this naturally adds to the hazards of the citizens using the highways for pleasure or in the ordinary pursuit of their business."

"In many instances schools, churches, business houses and gins are located alongside of or closely adjacent to the state highway and it is necessary for citizens and children to use these highways daily, and they should not be called upon to risk their lives and limbs by having placed upon these highways such additional traffic as would unreasonably interfere with their use by such citizens and children.

"There are at this time some five hundred trucks authorized to be operated out of Dallas as common carriers and one hundred and twenty-two trucks as contract car-

riers, while there are some four hundred common carriers operating out of Houston and fifty or sixty contract carrier trucks. In addition there are several hundred special commodity trucks operating out of Dallas and Houston, engaged in the transportation of various commodities but principally that of oil field equipment."

[fol. 79] The statute likewise makes this opinion of the Commission admissible in evidence on an appeal from its order. Such findings of fact, therefore, by the Commission, set out as a part of its order, are entitled to the same degree of verity as the order itself. While the findings above quoted are general in many respects, and based upon hearings of other applications than that of McDonald, it affirmatively appears that they are applicable to the cities and highways through and over which McDonald sought to operate. We do not understand, nor do we think the Legislature ever contemplated, that the Railroad Commission should be required, each time an applicant sought a permit to use a state highway for commercial purposes, to conduct extensive hearings over and over again, as to the condition of such highway, the traffic thereon, and the public convenience in the use of such highway. When these facts are ascertained by the Commission, as related to cardinal public highways of the State, in the absence of a showing that conditions have changed thereon since the ascertainment of such facts, the Railroad Commission may properly act upon applications for permits to operate upon such highways, based upon the facts and conditions relative to such highways theretofore properly and adequately obtained, without the necessity of detailed proof thereof on each and every application presented to it. Its findings with reference thereto, as recited in its orders, will be presumed to have been supported by competent evidence, unless the contrary is made to appear upon an appeal from its order.

From the trial court's finding and from argument presented in appellee's brief, we infer that the judgment of the trial court was based largely upon the fact shown that the Commission had granted on March 29, 1934, to Wald [fol. 80] Transfer & Storage Company a permit to operate over the same highways as a motor carrier. It is agreed, however, that the Commission had the Wald application under reconsideration at the time of the trial. We have read the testimony brought up as a part of this record which was

heard by the Commission on Wald's application. It is unnecessary to detail it here. It was clearly sufficient to have authorized the Commission to deny Wald's application; and the fact that the Commission had, after granting such application, reconsidered and reopened the Wald case, might indicate that such was its purpose. Regardless of that, however, that testimony was sufficient to show not only prospective injury to portions of such highways as a result of added burdens on same; but an added safety hazard to the traveling public, and public inconvenience as well. It is to be noted also that McDonald's application was not heard until after that of Wald Transfer & Storage Company had been acted upon. The Commission could, therefore, have found, even if Wald be permitted to operate, that any additional operations over such highways would result in damage to the highways and dangers and inconvenience to the public. Such was its prerogative. The mere granting of one permit to a motor carrier over the highway is no evidence that another applicant is entitled to be granted such privilege over the same highway. The use made of it by the first permittee may be all that the public convenience and public safety will permit. And if, in the opinion of the Commission, based upon substantial evidence, the operations of Wald over such highways, even if his permit is not revoked, increased the traffic thereon as much as the public convenience and public safety would war- [fol. 81] rant, it was the function and duty of the Commission to deny McDonald's application, though it had already granted that of Wald to operate upon the same highways. The use of the public highways for profit by an individual is not a matter of right but a mere privilege, subordinate at all times to the use thereof by the public. No question as to rates on interstate operation is here involved, and no discrimination as between permittees. The power of the Commission herein exercised obviously was not an attempt to regulate interstate commerce, but a legitimate exercise of the police power of the State in the use of its highways with regard to the preservation thereof and the safety and convenience of the public. The effect on interstate commerce was, therefore, but incidental. Under these circumstances the State is not denied by the Federal Constitution the power to regulate the use of its property in the interest of public safety and public convenience, even though in doing so such regulation incidentally affect inter-

state operations of such trucks upon its highways. See Bradley v. Public Utilities Com., 289 U. S. 92, 77 L. Ed. 1053, 85 A. L. R., 1131; Continental Baking Co. v. Woodring, 286 U. S. 352, 76 L. Ed. 1155, 81 A. L. R. 1402; Stephenson & Binford, 287 U. S. 260, 77 L. Ed. 292; Texport Carrier Corp. v. Smith, 8 Fed. Sup. 28; Wald Transfer & Storage Co. v. Smith, 4 Fed. Sup. 61.

All of the matters here presented were passed upon and determined prior to the passage and effective date of what is known as the Federal Motor Carrier Act of 1935, effective August 9, 1935, and we have not taken that Act into consideration in determining the issues here presented.

[fol. 82] Having reached the conclusion that the record presented shows that the order of the Railroad Commission, and the findings made by the Commission, as provided for in Sec. 12, Chap. 277, Acts Reg. Ses., 42nd Leg., were based upon substantial evidence; and that the order is not unreasonable nor arbitrary as to appellee, the judgment of the trial court is reversed and the injunction granted is in all things dissolved.

J. H. Baugh, Associate Justice.

Reversed and Injunction Dissolved.
Filed: January 8, 1936.

[fol. 83] Court of Civil Appeals, 3rd Supreme Judicial District, Austin, Texas

I, R. E. Moore, Clerk of the Court of Civil Appeals of the Third Supreme Judicial District of the State of Texas, hereby certify that the foregoing ten pages contain a true and correct copy of the opinion filed in said court on the 8th day of January, 1936, in the following numbered and entitled cause, towit: No. 8284, Railroad Commission of Texas et al. vs. A. E. McDonald, on appeal to said court from Travis County, Texas.

Witness my hand and the seal of said Court, this the 20th day of Jany., A. D. 1936.

R. E. Moore, Clerk. (Seal Court of Civil Appeals of the State of Texas.)